

**VIDEO ON THE INTERNET: iCraveTV.com AND
OTHER RECENT DEVELOPMENTS IN WEBCASTING**

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

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WEDNESDAY, FEBRUARY 16, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE OF COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:23 a.m., in room 2123, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Stearns, Gillmor, Cox, Largent, Shimkus, Wilson, Pickering, Ehrlich, Markey, Eshoo, Engel, Wynn, Luther, Sawyer, Green, and McCarthy.

Staff present: Justin Lilley, majority counsel; Cliff Riccio, legislative clerk; and Andy Levin, minority counsel.

Mr. TAUZIN. The subcommittee will please come to order. Today the subcommittee begins an inquiry into a number of issues involving video on the Internet. I would ask all of our friends and guests to take seats, and the Chair will recognize himself for an opening statement.

In many respects, the inquiry today is an extension of a long-standing interest to the chair, that being the state of competition in the video programming markets. In one sense, the Internet is much like cable and much like a satellite platform in that it's capable of casting a wide array of video programming to a large audience of American and international consumers, but in another and more important sense, the Internet is like no other medium. First, it is global. It is geographically unconfined. It enables consumers to quickly and efficiently copy and distribute any digitized product. That's what makes it a marvel, and that's what literally makes it so potentially important to our country and the world.

But as recent events involving widespread hacking indicate, the Internet also invites those elements in society that refuse to recognize fundamental rules of fairness and decent conduct. It is for this reason that Congress must proceed cautiously and deliberately as it considers whether to extend a compulsory license to Internet service providers.

I would note for my colleagues that Congress just concluded deliberations that were two separate satellite compulsory licenses, and in both instances we reaffirmed our commitment to protecting the broadcaster's Grade B contour. We reaffirmed our commitment

to ensuring that copyright holders have adequate protections against piracy of their works.

Content is our Nation's richest expert product and should not be unwittingly exposed to piracy, and localism is still one of Congress's most important telecommunications objectives, one that is enshrined in the Communications Act. So all of you in favor of Internet-specific licenses have a very high threshold, clearly, before Congress can proceed with that form of legislation. The Internet by definition is ill-suited for the types of rules and obligations that normally come with compulsory licenses. How can you define a Grade B contour of 6 billion people? Nevertheless, we should ask and we will ask here today what role can Congress play to facilitate enhanced service and competition in the delivery of video over the Internet.

Today we will here from some old friends and some new friends, an expert on copyright law, about the challenges we face in balancing of content owners and the interest of consumers. New video streaming technology presents potential threats to content owners, but it also offers vast new opportunities to information consumers. We will no doubt hear from both, and we no doubt have to be concerned with both of those interests. Without a doubt, consumers will increasingly seek to expand their viewing options, and in fact as we know in the digital age, video will become just one part of a digital stream of data that includes all forms of communications.

Our challenge, as it was in crafting the Digital Millennium Copyright Act, is to ensure that both content owners and consumers maximally benefit from these exciting advances in technology. As a committee, we can encourage further electronic commerce if we get the balance right. We welcome the suggestions of our witnesses about how best to meet this challenge, and we certainly expect to learn an awful lot today.

The panel we've assembled for our committee today is extraordinary in its depth, knowledge, and impact upon the issues I've outlined, and I expect that not only the written statements we have already received, which I will ask now unanimous consent be made a part of the record, and without objection it is so ordered, but the verbal testimony we receive I think will further enhance our capacity to understand and hopefully one day make decent policy in this very difficult area.

The Chair has extended his statement long enough to welcome the incoming and very good friend from Massachusetts, the ranking minority member of our committee, Mr. Markey.

Mr. MARKEY. Thank you very much, and I think everyone enjoyed being exposed to streaming Tauzin, you know, which is a special treat being here in this Telecommunications Subcommittee.

I want to commend you for calling this hearing on Internet video, issues related to video streaming and webcasting, including debates over whether Internet service providers are eligible to utilize the existing statutory licenses accorded to cable operators and satellite providers to deliver Internet video. I think that this hearing will provide a very interesting morning of testimony and serve as a harbinger of conversations to come as packet switch delivery of video becomes more and more prevalent over different media.

There is no question that as deployment of Internet-based technology continues at a heady pace, that existing results that were drawn up based largely upon the geographically rooted architecture of cable systems or geographically licensed television broadcasting may come under strain. We already witnessed last fall how new satellite technology with increased capacity and new local-to-local service sheds new light and increases scrutiny upon existing FCC rules such as those addressing network non-duplication, syndicated exclusivity, and sports blackout.

These rules were drawn up to promote important communications values of localism and diversity, and Congress sought to preserve these values while injecting another important value, competition, into the mix; and while fairness to various market participants and dictating parity, life as the saying, goes is not always fair, in the new law rough equivalency was sought on many issues between cable and satellite providers, yet rather than giving the satellite operators a statutory license like the terrestrial license that cable operators use which lasts forever, Congress chose to limit the satellite license to 5 years, and it comes with a higher rate than cable pays for same programming.

The Internet, on the other hand, is not technology specific, not territorially limited in its natural unfettered state. It can be delivered over cable systems, phone networks, satellite technology, and over wireless infrastructure. Once something is on the net, it can be accessed in Boston, Bermuda, or Beijing. This international aspect of Internet access is something that will bring many existing rules under a new examination, and it should not change the values that drove development of our policies.

One of those values is protected intellectual property. Recently, a Canadian-based company began streaming Canadian- and Buffalo-based TV signals over the Internet. This company, iCraveTV.com, argued that its service was permissible under a Canadian statutory licensing law. In the U.S., the motion picture industry and the sports leagues sued and won an injunction against iCraveTV that ordered it to stop its webcast. This case can be cited legally as iCraveTV v. iCreateTV.

There is lingering questions, however, that this hearing will explore which is whether the mere fact that something is delivered through a packet switched Internet-based system means that it is qualitatively different from other forms of delivery or legally different, and if so, we need to explore what adjustments should be made in our policies if any adjustments should be made.

I have also found that many people in the emerging Internet industry go through life with binoculars on. They are visionary. They can see way out into the future and tell us dreams of things to come. Everything up close, however, is completely out of focus. I want to encourage our panel to not only give us their vision of where this mark will be 10 years from now or 15 years from now, but also where they think it will be 1 or 2 or 3 years from now. That helps us as policymakers. The vision may or may not ever come to pass. What happens a year or 2 years or 3 years is very real in the lives of consumers and competitors in our country.

We have an excellent panel before us today. I look to forward to hearing from our distinguished witnesses.

I congratulate you, Mr. Chairman, on this excellent hearing. I yield back the balance of my time.

Mr. TAUZIN. I thank my friend. The Chair is now pleased to recognize the gentleman, Mr. Shimkus, for an opening statement.

Mr. SHIMKUS. Thank you, Mr. Chairman, and I want to mention that today is Lithuanian Independence Day. I know Chris would know that, but it's important to state that publicly for the record.

Thanks for calling this hearing. The late, great Harry Kari said: "It might be, it could be, it is a home run." As most of us know, he was a Cub announcer. Before that, he was a St. Louis Cardinal announcer. Jack Buck is quoted as saying, "Go crazy, everyone, go crazy," when the Cardinals won the pennant in the World Series. Joe Buck said, "to the track, well, gone," in reference to Mark McGuire.

As much as those statements are indelibly sketched into any mind by listening to St. Louis Cardinal broadcasts over 42 years, this is also indelibly sketched: "This broadcast is authorized by the St. Louis Baseball Cardinals and is solely intended for our listening audience. Any rebroadcast, retransmission of the account, or description of this game without the express consent of the St. Louis Baseball Cardinals is strictly prohibited."

I think that is going to be part of the major debate today as we talk about copyright issues, and my wife, who is a church organist, to her credit went through the library and threw away the Xerox copies of music because of the unintended use of depriving the artist the compensation due to their works.

Having followed this issue and hearing from various parties about webcasting, obviously I am intrigued, like all of us are, by the possibilities the Internet holds. The question is not what if webcasting, because it is a reality, but what are we going to do to uphold the copyrights in a webcasting world.

I was extremely intrigued reading Mr. McCallum's written testimony. Besides a complete lack of remorse for violating U.S. copyright law, I was struck by the utter lack of respect afforded current copyright holders. Mr. McCallum goes to great length to explain how Canada is different from countries who do not operate under similar copyright principals, yet he fails to realize that the improper use of copyright materials, whether in China or Canada is still illegal. In fact, it may be worse when someone in a country with similar copyright principles is the violator.

We all know that webcasting is here and it offers great possibilities to consumers. How we can facilitate competition and allow consumers the greatest choices with evolving technologies will be the next question.

Again, Mr. Chairman, thank you for calling this hearing today, and I look forward to hearing from the people of the panel. I yield back my time.

Mr. TAUZIN. I thank the gentleman. The gentlelady from California, Ms. Eshoo, is recognized for an opening statement.

Ms. ESHOO. Thank you, Mr. Chairman, and I want to join all of my colleagues on the committee in thanking you for holding this very important hearing today. I look forward to hearing testimony from our panel of expert witnesses on the distribution of local broadcast signals over the Internet.

Much of what this subcommittee has been focusing on recently is how the current paradigm of laws will apply to E-commerce and the new technologies created for utilizing the Internet to its fullest potential. We are currently dealing with the changes of this paradigm in legislation which governs the use of electronic signatures and records with the protection of data bases and with the privacy of our personal information in the online world.

Today, we have another example of this burgeoning public policy question. This is a very important question we are facing, namely to investigate whether our current laws protect broadcast content providers from copyright infringement in the online world. The courts are likely to decide this sooner than this subcommittee or the Congress, especially in light of the iCraveTV.com lawsuit that I'm sure we're going to hear more about today.

I think it would have been a big mistake if the Congress has granted Internet webcasters the same compulsory license rights that cable companies currently operate under. As committee members will I think recall, this was briefly considered during the conference of the Shiva legislation. How we regulate cable companies, in my view, should not automatically—and I think the operative word here is “automatically”—extend to webcasters and the Internet.

That's why these hearings are so important. Members will learn, be able to ask very important questions, get some very important answers back from these expert witnesses, and I think that out of this some clarity will emerge. Just because we are having a hearing, I do not believe that that automatically should extend itself to legislation or the launching of legislation in this area.

So, thank you, Mr. Chairman, for holding the hearing. Thank you to the witnesses, some of whom we have welcomed back here again and again; and to those that have not been here, a welcome to you as well. Yield back.

Mr. TAUZIN. I thank the gentlelady.

The Chair now recognizes the gentleman from Oklahoma, Mr. Largent, for an opening statement.

Mr. LARGENT. Thank you, Mr. Chairman. Mr. Chairman, I want to welcome my fellow Oklahoman and former Senator and former Governor of the State of Oklahoma and current president of the University of Oklahoma, the Honorable David Boren, who will be testifying on behalf of the University of Oklahoma and the NCAA.

Senator Boren, welcome. We're glad to have you back in Washington, DC for a time.

I think this morning's hearing can be summed up with the following question: Webcasting, a blessing or a curse? The Internet service provider community views webcasting as a consumer-friendly blessing. ISPs contend that as broad band technologies continue to deploy, the Internet should be allowed to compete on the same playing field with cable, satellite, and traditional broadcast television as the legitimate alternative of distributing video programming.

This raises public policy questions of whether Internet ISPs should have the same statutory rights as cable and satellite operators to retransmit broadcast programming without the consent of copyright holders. The content community, television networks,

movie studios, broadcast stations, sports leagues, and the NCAA take a more skeptical position of webcasting. They see the unauthorized retransmission of their intellectual property as a threat to their economic well being.

Copyright holders will argue that the Congress did not intend cable and satellite licenses to apply Internet-based services because the Internet has no geographic boundaries, as is the case with cable and satellite delivery systems. For instance, a broadcast originating in Tulsa, Oklahoma can be easily retransmitted virtually anywhere in the world via the Internet.

The content industry has also expressed concern that unauthorized delivery of video programming over the Internet will lead to more piracy because of the ease with which the Internet enables computer users to copy and redistribute computer files.

I'm looking forward to the hearing from our witnesses this morning who I'm sure will offer compelling arguments on both sides of this issue. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman.

The gentleman from Ohio, Mr. Sawyer, is recognized for an opening statement.

Mr. SAWYER. Thank you very much, Mr. Chairman. I join my colleagues in my thanks for having this hearing. My hope is that it will touch a far broader arena than the instant case that brings it before us.

I would like to associate myself with the comments of both you, Mr. Chairman, and the ranking minority member, as well as a number of my colleagues in their comments. I have an opening statement which I will not read and would appreciate it if it could be inserted into the record.

But let me just simply say that while we all seem to be saying that we want to strive toward technologically neutral but legally consistent interpretations of law that make possible the growth of this extraordinary medium without trampling on the rights of those who create content, and while it may also be true that courts may resolve this more quickly than the Congress, I suspect that that may be only because the violation, if there was one, occurred within a convenient terrestrial venue.

The real question is whether or not this problem can be dealt with on a global basis. We face a problem of harmonizing law and regulation around the world and addressing the question of with whether or not existing jurisdictional oversight through WTO and RIPO or other kinds of legal superstructures need to be created in order to assure that technological neutrality and legal consistency.

I hope that we can talk in terms of those mechanisms and whether or not mechanisms will serve or whether we need to investigate further global action to deal with this particular undertaking. With that, I yield back my time and thank the chairman for this opportunity.

Mr. TAUZIN. I thank the gentleman.

The Chair is now pleased to welcome and recognize the vice chairman of the committee, Mr. Oxley, for an opening statement.

Mr. OXLEY. Thank you, Mr. Chairman, and welcome to all of our distinguished witnesses.

The Internet is revolutionizing our lives in ways we never would have thought possible just 5 or 10 years ago. People of all ages routinely turn to the web as their primary source of news and information, and in fact, many people are listening to a live broadcast of this hearing through the Commerce Committee's web site even as we speak.

Television broadcasters have started to offer their newscasts and other types of programming to web servers as well, and while the quality of these Internet broadcasts is currently limited, several companies are working to perfect their video streaming abilities. It's only a matter of time before this technology will allow web-based broadcasts to compete on equal footing with cable and satellite delivered programming.

At the end of the last session, the House gave final approval to the Satellite Home Viewer Improvement Act designed to promote satellite television as a competitor to cable. I am a proud supporter of that measure.

I look forward to this hearing on what role Congress should play, if any, as Internet video broadcasts emerge as a serious competitor to cable and satellite. I welcome the opportunity to discuss whether Congress should establish a separate licensing system for Internet service providers or if these ISPs should be allowed to use existing statutory licenses to deliver programming.

In light of the recent court ruling against the Canadian company iCraveTV.com in which the motion picture studios and sports organizations won an injunction against the company for distributing their programming on the Internet, I look forward to hearing from Mr. McCallum of iCraveTV, Mr. Valenti, of course, from the motion picture association, and our former Congressional colleague, Mr. Boren, President of the University of Oklahoma, and other witnesses as well.

Thank you all for coming today, and I yield back. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentlemen.

The gentlelady from Missouri, Ms. McCarthy, is recognized for an opening statement.

Ms. MCCARTHY. Thank you very much, Mr. Chairman. Like my colleagues, I seek a balance between advancing technology such as webcasting and protecting the content creators and their copyright material. We must be about the business of fostering new opportunities for providing content on the Internet as we assure that intent provides an efficient, secure, and profitable marketplace. Experimentation should be encouraged, and freedom, including the freedom to exercise property rights in content, should be the basic rule of the Internet.

Let's be careful, Mr. Chairman, not to rush to implement policy that may hamper the development of the Internet freedom of creativity or the technological advancements of the future of the Internet, and that is why I look forward very much to the testimony of this distinguished panel today and to working with you, Mr. Chairman, on this issue. I yield back.

Mr. TAUZIN. I thank the gentlelady.

The gentlelady from New Mexico, Ms. Heather Wilson is recognized.

Ms. WILSON. Thank you, Mr. Chairman. I'm interested in hearing from the panel. My district has a number of radio and television stations who are moving to the web. In fact, in the morning I listen to 770 KKOB from downtown Albuquerque, New Mexico here in my office, and our three television stations have web sites which are relatively new but I'm sure will begin streaming their broadcasts shortly, and the reality is I like it. I'm a consumer of that information, and I suspect that what's really driving all of this is that a lot of people like it.

The question is what if any regulation should apply to those kinds of broadcasts. I'll be interested to here what the panelists say, particularly with respect to the protection of copyrights, in making sure that advertising revenues go where they really should go; but with respect to trying to control this, you know, there is reason for licenses. It's because we were allocated limited resources like the broadcast spectrum or we were trying to limit and control monopolies like the one, cable, that's provided to your home, but the wonderful thing about the Internet is that it is so unlimited.

I have a choice between KKOB out of Albuquerque or a whole lot of other things online, and I think that is the wonderful thing about this. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentlelady.

The gentleman from Mississippi, Mr. Pickering, is recognized.

Mr. PICKERING. Mr. Chairman, I'll be very brief. I just want to thank you for holding this hearing. This is an extremely important issue as we go forward to new technologies, that we want to make sure that we maintain the copyright and property rights. It is extremely important, but I do believe that we need to be cautious before we take any specific mandated approaches, and so I look forward to hearing from the panel today and look forward to working with you on this issue as we go forward.

Mr. TAUZIN. I thank my friend.

The gentleman from California, Mr. Cox, is recognized for an opening statement.

Mr. COX. Thank you, Mr. Chairman. Webcasting is good. Part of what we may be debating here is that question, but I do not think there is a question. I think webcasting is good. It's good for consumers who are provided with an alternative to cable or satellite or terrestrial broadcast. It's also good for the creative content providers, and it's good for producers of that material and distributors of that material, because the lesson of the 20th century is that new technologies create new markets.

The only people who should be threatened by the Internet are those who want to preserve the status quo and insulate themselves from new kinds of competition that they have not already met. So the Internet is a threat. It's a threat to the status quo, and it's a threat to the comfortable, privileged position of industries beyond what we are talking about here today that have not had to face this kind of dynamic competition and anyone who wants to keep competitors out.

The Internet will permit consumers to get what they want unless the Government passes laws to prevent it. So we need to be attentive to our responsibilities here and make sure that we protect intellectual property, but that at the same time we resist the en-

treaties of competitors who may use arguments of that type to prevent competition. It requires a good deal of judgment on our part, but I think that this hearing will help us make that judgment.

I thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman.

The gentleman from Florida, Mr. Stearns, is recognized.

Mr. STEARNS. Mr. Chairman, thank you very much. Now, Mr. Chairman, I think you have got a tiger by the tail here. You know, I was thinking about what 40 years ago, maybe in the 1960's when cable started, probably these same type of questions were proposed and thought about, you know, what we source do television stations have in terms of copyright, what about international treaty organizations where the copyrights are violated.

So I think out of all the hearings both on the House and Senate, Mr. Chairman, I think you have got the tiger by the tail here.

Mr. TAUZIN. Would the gentleman yield?

Mr. STEARNS. Yes, I'd be glad to.

Mr. TAUZIN. I direct your attention to a little book called A Victorian Internet. It's a book that describes all these same issues when the telegraph was first invented.

Mr. STEARNS. Yes. I think that is where we are at, and Mr. McCallum is going to have to make the argument that what appears to be they have 1, 2, 3, 4, 5, 6, perhaps, and the two of you are going to have to make your case against these six, but just remember the cable TV operators made the same argument 40 years ago and they were successful. So you now have to do the same thing, and I think of all the members have pointed out we want to be very cautious about this. We want to make sure that copyrights are protected and that the laws are obeyed, but in the end we do not want to stymie competition, and as my colleague from New Mexico said, how great it is just to go up on the Internet and pull up your local television.

It is really very helpful, particularly if there are negative comments about yourself. You can quickly respond to them, whereas you would have to wait for some constituent to call you up and say did you know yesterday they said so and so about you.

So we have a real argument in favor of web TV, so I think the arguments have to be made, and of course this committee, Mr. Chairman, has to be very careful and cautious, and I thank the gentleman.

Mr. TAUZIN. I thank the gentleman.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Thank you, Mr. Chairman.

I commend you for holding this hearing. The era of Internet video has arrived. It offers unforeseen benefits. But Internet video also raises a host of thorny issues.

Today's hearing will help the Subcommittee sort out some of those tough issues. And the timing couldn't be better, because I think it is inevitable that, over time, we will see a proliferation of Web sites like iCraveTV.com.

Many will be offshore. But eventually many will likely emerge here, in the United States. After all, as the record industry will tell you, it was on America's college campuses that the MP3 revolution was born.

So let's begin to grapple with these issues, and find out what—if any—role Congress should play in their consideration.

With today's hearing, we will explore how advances in technology give consumers more access to video programming on the Internet...while also recognizing that technology raises serious copyright issues.

As my colleagues will recall, this debate began—and ended!—prematurely last Autumn. Without any notice to Members of this Committee, provisions were added to the Conference Report to the Satellite Home Viewer Improvements Act of 1999 that could have stifled the development of electronic commerce.

These provisions would have permanently excluded any Internet service from re-transmitting broadcast programming pursuant to a statutory license.

Today, the Commerce Committee will assess how current law applies to the delivery of video signals over the Internet. As someone proud to represent the State that is home to most of the major Internet service providers in the world, I have little doubt about the importance of online communications technologies for enhancing consumer choice.

Online technology has transformed the way consumers receive information and entertainment. Because this transformation strengthens our economy, it is essential that we give full attention to this issue...and carefully assess whether Congress needs to amend current law.

In 1998, this Committee played a critical role in drafting the version of the Digital Millennium Copyright Act that was ultimately signed into law. We demonstrated that it was possible to strike a fair balance between the concerns of content owners and the interests of consumers. If necessary, Congress can do so again.

I look forward to receiving the testimony of our witnesses today and working with them in the future to produce legislation, as may be appropriate.

Thank you, Mr. Chairman, and I yield back the balance of my time.

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TEXAS

Thank you for holding this hearing on webcasting. For the past six to seven years the telecommunications landscape has changed drastically. Webcasting represents that change and the growing convergence of telecommunications technologies. Since its inception, webcasting has been dominated mainly by live events: concerts, sporting events, press conferences. However, both local and network stations have begun to experiment with streaming their local programs over the internet.

In Houston we have a few stations that stream their local programming over the internet. Both KHOU, Channel 11, and KPRC, Channel 2 stream their local news. Spending so much time in DC it is nice to be able to keep up with news from Houston as it happens.

However, I do have some general concerns about webcasting. Such as, are adequate protections available for broadcasters and companies that produce these programs? The internet has helped fuel our economic boom and our technological expansion. However, the one unfortunate facet about the Internet is the ease in which something can be copied and retransmitted almost instantly. Second, what will happen if programs are made strictly for the Internet public. Then we, Congress, need to ask the question, "What about the Americans who don't have access to a computer." Third, I am concerned that if we do not stop illegal webcasting now it will grow and people will become accustomed to having illegal programming. Then we would have a situation similar to last year's satellite television situation.

As we continue to look at web casting, from a policy perspective. we will have to decide one very important policy question. Do we treat ISPs like we do satellite and cable companies and impose existing regulations on them, or do we consider ISPs a separate entity with completely new regulations.

Thank you Mr. Chairman for holding this hearing.

Mr. TAUZIN. Does the gentleman from Massachusetts have a unanimous consent request?

Mr. MARKEY. Yes, I would ask unanimous consent that the gentleman from Washington, a distinguished visitor to our committee today, Mr. Inslee, be allowed to introduce one of the witnesses appearing before our committee today.

Mr. TAUZIN. Is there any objection?

Without objection, it is so ordered, and we welcome you, Mr. Inslee.

Mr. INSLEE. Thank you, Mr. Chairman, and thanks for this opportunity. I would like to introduce to the panel Alex Alben, a constituent whose RealNetworks streaming genius has created great opportunities for Americans and great interest of this committee in a new issue, and thanks for joining us, Alex.

Mr. TAUZIN. Thank you for that testimony, Mr. Inslee. I appreciate it, and welcome, Mr. Alben.

If there are no other requests for opening statements, we will now introduce our distinguished panel, and they are distinguished, beginning with the most distinguished Jack Valenti, President and CEO of the Motion Picture Association of America; Mr. Paul Karpowicz, Vice President of LIN Television in Providence, Rhode Island; Mr. Bob Roback of LAUNCH Media; the Honorable David Boren, who has been previously introduced, and, David, I want to especially welcome you back to the Hill.

Mr. BOREN. Thank you, Mr. Chairman.

Mr. TAUZIN. We miss you a great deal. I'm glad to see you again, sir.

Mr. Alex Alben, who has also been recognized, and we want to welcome you, Mr. Alben; Mr. Ian McCallum, Vice President of Corporate Sales and Development of iCraveTV; Mr. Stuart Beck, President of Granite Broadcasting Corporation; and Peter Jaszi, a professor of Washington College of Law, who is going to teach us a little bit about copyright, I suspect, before we're done today.

We begin our panel with Mr. Valenti, the President of the Motion Picture Association of America. Jack, as we do in our all our hearings, your written statements, as you may have noticed when I began, are part of our record, and we have read them and we will read them over again, and extensively, and we want to ask you, please, if you might summarize.

We have some new incredibly expensive digital equipment that is going to signal you when your 5 minutes are up. We would appreciate it if you would abide by the 5-minute rule. The devices will light up green, yellow, and red to give you an indication, and if you will all please try to abide by that rule because we have a big panel. I would like to get as much Q and A discussion with you as we can reach as soon as we can.

Mr. Valenti, you are welcome, sir.

STATEMENTS OF JACK VALENTI, PRESIDENT AND CEO, MOTION PICTURE ASSOCIATION OF AMERICA; IAN McCALLUM, VICE PRESIDENT, CORPORATE SALES AND DEVELOPMENT, TVRADIONOW, CORPORATION; HON. DAVID L. BOREN, FORMER UNITED STATES SENATOR FROM THE STATE OF OKLAHOMA, AND PRESIDENT, UNIVERSITY OF OKLAHOMA; ROBERT D. ROBACK, PRESIDENT, LAUNCH MEDIA; STUART J. BECK, PRESIDENT, GRANITE BROADCASTING CORPORATION; PETER JASZI, PROFESSOR, WASHINGTON COLLEGE OF LAW, AMERICAN UNIVERSITY; PAUL KARPOWICZ, VICE PRESIDENT, LIN TELEVISION; AND ALEX ALBEN, VICE PRESIDENT, GOVERNMENT AFFAIRS, REALNETWORKS

Mr. VALENTI. Thank you, Mr. Chairman, very much.

As I begin, I would like to first introduce, by way of announcing, a freshly formed group called the Copyright Assembly. These are

all no surprises in this country to whom copyright is absolutely indispensable to their future, and probably these names I will read out are the great favorites of the American consumer.

Let me tell you who belongs to this Copyright Assembly: First, the ABC television network; the America Association of Advertising Agencies; the Association of American Publishers; the American Society of Composers, Authors, and Publishers; Professional Baseball; Broadcast Music, BMI; Business Software Alliance; CBS; Directors Guild of America; ESPN; FOX; Interactive Digital Software Association; the LPGA Tour; the PGA Tour; Magazine Publishers of America; NBA; the National Association of Broadcasters; the National Cable Association; NCAA that's going to be represented here today by a former Governor and former Senator from Oklahoma, now the President of the University of Oklahoma, David Boren; the National Football League; the National Hockey League; the National Music Publishers Association; NASCAR; NBC; Newspaper Association of America; the Recording Industry Association of America; Screen Actors Guild; Software and Information Industry Association; the Writers Guild of America; MGM Studios; Paramount Pictures; Sony Pictures; Time Warner; 20th Century Fox; Universal Studios; and Walt Disney.

Mr. TAUZIN. Name dropper.

Mr. VALENTI. That's how I make my way through life, Mr. Chairman.

First, I want to associate myself, I think as is the Congress way, although Chris—I mean Congressman Cox is gone, he said the Internet is good. I associate myself. He's absolutely correct.

Everyone that I mention is spending hundreds of millions of dollars to invent new business models for conveying to consumers what they have to offer, presenting to consumers all the things that they have created. The Internet is the future, as he said, but as legitimate businesses emerge on the Internet, illegitimate intruders find this a haven. It always happens. There are many people who profess to have a great honorable intention about the advancement of technology who oftentimes treat with a brazen disregard the rules and the laws which govern America's daily labor.

Now, why is this a matter of concern to this Congress? Because, as the chairman pointed out a moment ago, people I read comprise the greatest trade export that any country in the world could ever have. We dominate the world as favorites for people who watch on television or cable or satellite or the Internet, whatever. We bring back to this country enormous billions in surplus balance of trade when this Congress hears nothing but the soiling words of trade deficits for which we are hemorrhaging at this time. We bring back more—have more international revenues than automobiles and auto parts, than aircraft, than agriculture. It is an incredible jewel in America's trade crown.

Now, why are we here? I'm not asking the Congress to do anything specific. What I'm asking you to do is to consider very carefully the Internet and how to deal with it. The Internet is something that is almost uncomprehending to the human mind. We have never seen anything like it. It has nothing to do with telegraph or cable or satellite. Indeed, the difference between satellite and cable and the Internet is the difference between lightening and

the lightening bug, totally different. Therefore we need to see what is going to happen.

The second thing you ought to consider is the words of the former speaker of this House, Sam Rayburn, who many years ago said the three most important words in the Congressional lexicon, Wait a minute. That's what I'm suggesting that you do. Why? This Internet is growing like kudzu. In 1995, there were 100,000 sites. Today, there are 10 million. In 1995, 5 years ago—4 years ago, there were a little less than 10 million host computers. Today, there's 73 million. In 1995, there were 10 million pages on the Internet. Today, they are 1 billion.

Congressman Markey said, "Where are we going to be 1 year or 2 years from now." I'm going to tell you this. All of the technology that we find so laudable today, 1 year from now, 2 years will be primitive, and we all know that. Neither Bill Gates nor anyone else in this world can tell you with any precision where we are going to be a year from now. This thing is growing so fast, piling technological advance upon technological advance.

All I am asking you to do is to be very cautious and wary about granting compulsory licenses to anybody until you examine the vast and massive difference between something that with one click stroke can take you to 6 billion people instantaneously with the speed of light. Cable cannot do it. Satellites cannot do it. Video cassettes cannot do it, and even what I'm saying today is so fascinating to me cannot do it either.

So I just urge you, Mr. Chairman—the red light. May I use the words of the Congress here? I yield back my extra time.

[The prepared statement of Jack Valenti follows:]

PREPARED STATEMENT OF JACK VALENTI, PRESIDENT & CEO, MOTION PICTURE
ASSOCIATION OF AMERICA

To the honorable members of this Committee, let me introduce the freshly formed *Copyright Assembly*. It enlists into its membership the vast array of American enterprises involved in sports (professional football, basketball, baseball, hockey, NASCAR, NCAA), music, song-writing, advertising, software) broadcasters, both networks and stations, cable, movies, publishing, television programs, home video. These are the enterprises which are America's most wanted exports, in addition to being the favorites of the viewing, reading and listening public.

Why form a Copyright Assembly? Because we are deeply concerned about the future of creative works. All these valued assets, protected by Copyright whose roots are in the Constitution, are indispensable to both the culture and the economy of the United States.

Why this concern? All the members of *The Copyright Assembly* are actively embracing new Internet opportunities for consumers, are developing new, inventive business models to deliver our creative works to homes, businesses, schools, universities. Many of us are licensing our creative material to Internet companies. Hundreds of millions of dollars are now being invested by our members to develop this new economy, which along with Gutenberg's movable type and the invention of television, ranks as one of the great seminal entrants into the human society. We are all eager to be part of the revolutionary technological magic. But we worry lest the great potential, the immense future worth of the Internet, becomes tangled by overt and covert piracy of copyrighted material.

Why is there a problem? As legitimate businesses emerge on the Internet, illegitimate intruders find the Internet a haven. These invaders steal copyrighted works, assault legal business sites and otherwise disrupt the normalities of Internet conduct. Piracy comes in all sizes, ingenuity and motivation. Which is why at this moment we confront attacks by those who profess to defend technological advancement but in truth who treat Copyright with a brazen disdain for laws and rules which guide and govern the daily labors of Americans.

Why should the Congress care? The Congress should hugely care because these creative works do not spring from a void. The source bed of this creativity lies within the imagination, artistry and ingenuity of a community of artists and craftsmen who provision Americans with most of what they read, hear and watch. It is the summation of massive infusion of risk capital that must be, for the most part, recouped else the risk becomes too large, the capital becomes too cautious, and the works dry up. We should remind all who read this testimony that the members of *The Copyright Assembly* comprise the greatest trade prize available to any country on this planet. Intellectual property gathers in over \$65 Billion annually in *international* revenues—more than automobiles and auto parts, more than aircraft, more than agriculture! It produces new jobs at *three times* the annual rate of the economy as a whole. Moreover America's intellectual property revenue curve is rising all over the world. No wonder it is an engine of real growth for this nation.

Why this overture to the Congress? It's really not an overture. We are not asking the Congress to do anything specific at this time, except to understand the economic and cultural worth of those enlisted in *The Copyright Assembly*. It's a value that cannot be Xeroxed or cloned. As the Congress considers public policy issues which connect to the New Technologies and the delivery of creative works to American consumers, we urge the Members to put our concerns and our optimism at the top of congressional priorities. When there is an advocacy for enlarging Compulsory Licenses or other congressionally mandated marketplace interventions, we recommend that the Congress remember what former Speaker Sam Rayburn once declared to be the three most important words in the congressional lexicon: "Wait a minute."

The simple fact is this: The protection of copyright and copyrights is not antagonistic to the New Technologies, such as the Internet. Not at all. The Internet is widened and made more fruitful by our high velocity involvement in it. But if we cannot protect what we invest in, create and own, then we don't own anything.

Mr. TAUZIN. Again, we'll ask you all to watch those lights because we're going to have to get through this today as expeditiously as we can.

We will rotate between content and Internet witnesses today, and we will move second to Mr. Ian McCallum, Vice President corporate sales and development of iCraveTV. Mr. McCallum.

STATEMENT OF IAN MCCALLUM

Mr. MCCALLUM. I thank you, Mr. Chairman, for the invitation to speak to you about iCraveTV. My name is Ian McCallum. I am the Vice President of Corporate Sales of TV Radio Now Corporation which operates iCraveTV. I come from Toronto. I've heard a great deal of comments about Toronto and how nice it is. Peter Usenoff once described it as a New York run by the Swiss.

Canadian Radio and Video Entertainment, the acronym is CRAVE. The I is, of course, the Internet. iCraveTV, a companion television service. One of the fundamental principles behind the inception of iCraveTV and those of us who operate it is the awareness that without copyright revenues flowing to the rights holders, content will die. And as in all of the entertainment and information mediums, consent is king and therefore it is imperative that regimes be established that enable the flow from the consumers back to the creators.

One of the imperatives we realized in starting up is we had to move fast. We realized that we were operating in Internet time, not regulatory time, and I second everything that Mr. Valenti has said about the speed of development of the Internet, and we're all caught up in that, Canadian, American legislators, content creators, content distributors.

When we started out, we believed we had a good idea and that it would prove a popular service. We did not anticipate the level

of interest that it would generate and in some quarters, unfortunately, the hostility that it has arisen. We launched with 17 broadcast signals coming from Buffalo, New York and Toronto, converted those signals from analog to digital, and distributed them out over the Internet using the services of RealNetworks and their streaming system.

Users would come to the site. They would be asked to complete a terms of use agreement. That would be asked to enter the area code in Canada from where they were registering. They would then be granted access to one of the streams by going to a TV listings guide and clicking on that particular stream.

Our service simultaneously serves less than 4,000 viewers which is a tiny fraction compared to the tens of millions of viewers the same programs are receiving on Internet at the same time, and also using a facility provided by RealNetworks, we made sure that nobody could make copies of the programs that were being distributed.

Our service provides broadcast programming with the commercials fully intact to people who are not otherwise being served, people in remote areas, people in offices, people in universities. Furthermore, we are taking broadcast programming to the very screen that has cost broadcasters market share over the past 5 years. This should enable them to recapture some of that market.

The guided principles, included paying rights to the content holders, abide by all applicable laws and regulations, be first to market, work through partnerships, and operationally be lean.

We are not pirates, never have been, never will be, and we take extreme exception to that characterization. In part, the proof of that is that we enjoy the support of the relevant parts of the Canadian Government, broadcast regulator, and the copyright boards. Canadian law allows us to retransmit over the air television signals like cable, like satellite, and we are not required to obtain permission of the broadcasters before doing so.

The Canadian compulsory license for the retransmission of broadcast signals is, I understand, similar to U.S. law on cable and satellite transmission. The difference is that Canadian law is not technology specific, and so Canadians do not need to have a policy debate every time a new retransmission technology such as the Internet is introduced.

As I mentioned, we believe that an appropriate flow of revenues to copyright holders is important, and we initiated proceedings with the copyright board in Canada to establish a flow, and as of Monday of this week, the collective representing many rights holders including the MPAA have agreed to work out an appropriate tariff.

Advertising to Canadians constitutes our only revenue base, and due to the systems limitations, users coming from outside of Canada cost us telecommunications charges which we can not recover because we cannot advertise to them. Initially, we tried to enforce this geographic restriction by relying on the honesty of the users, and this was implemented at multiple levels. When we were looking at the technology, the systems that were available to us really resulted in us coming to this particular approach. Surprisingly, we also found that by and large it worked up to a point.

However, as the outside world that is outside of Canada became aware of iCraveTV, ironically in part due to the publicized criticisms of the security system by U.S. rights holders, it could not work very satisfactorily for long. We were subject to fraudulent and even criminal access to our sites. Therefore, we are implementing an enhanced system that we have designed that not only isolates our Canadian free transmissions from the United States but gives us as the first company on the Internet the ability to restrict programming to any country in the world.

Mr. TAUZIN. The Chair would note the bells, when they go off, signify a vote on the House floor, and this is probably going to happen during this hearing. So I want you all the know we are occasionally going to have to get up and make votes, and that is equally important that we abide by these time limits.

Mr. McCallum, your time has expired. Can you wrap it up for us now?

Mr. MCCALLUM. I will. Now we hope that this system we will be putting into use with content under contract with many of the people represented in this room and others. We are a Canadian company. We operate in Canada for Canadians. We are not trying to make any amendment to America law at this time. We hope that in the process, however, you establish rules and regulations that do not impact negatively on companies operating legally within other countries. After all, approximately 70 percent of our retransmission fees flow back to American companies, and if there are unrealistic, rigorous national regulations this might result in mirroring regulations in other countries, and the losers would be us all, and certainly the underserved and the consumers and the program producing talent would lose as well.

As a final point, I would like to commend to you a piece of existing legislation that comes from the Securities Exchange Commission in an analogous content and that deals with the attempt by companies to restrict access to securities offerings outside of the United States, that is to restrict Americans from accessing it, and the Securities Exchange Commission said, in conclusion, that it did not require perfection, only serious efforts that would discourage a great majority of potential purchasers.

Thank you, Mr. Chairman and members of the subcommittee for your interest in iCraveTV. I would be pleased to answer any questions you may have.

[The prepared statement of Ian McCallum follows:]

PREPARED STATEMENT OF IAN MCCALLUM, VICE PRESIDENT OF CORPORATE SALES AND DEVELOPMENT, TVRADIO NOW, CORP.

I am Ian McCallum, Vice President of Corporate Sales and Development of TVRadioNow, Corp., which operates the iCraveTV web site. I thank you, Mr. Chairman, for the invitation to speak with you about iCraveTV. When we started operation of the iCraveTV web site at the end of November of last year, we believed we had a good idea that would provide a service that many people would want to use, but we did not anticipate the level of interest and, in some quarters, unfortunately, hostility that our service would arouse. We have learned a great deal, and we would certainly do things differently if we knew in November what we know now and if we had the technology then that has since become available. However, we continue to believe that the idea behind iCraveTV is worth pursuing, and we think that we can provide a desirable service that makes good use of the unique capabilities of the Internet. We are a Canadian company run by Canadians, and we do not seek to influence the development of American copyright law. However, we hope that

American law will not be applied in such a way as to make it impossible for those outside the United States who want to operate under the laws of their own country, and to pay a fair return to American copyright holders, to make American works available over the Internet.

Upon its launch, iCraveTV's operations were structured as follows: It received broadcast television signals from stations in Toronto and Buffalo, New York, converted those signals from analog to digital form, and made them available to people using the iCraveTV web site, www.icravetv.com. Someone who came to the site could click on the "Watch TV" icon, get a list of television stations, and select a station to watch. By clicking on that station, the viewer could see on his or her computer monitor the show then being broadcast, either in a small corner of the monitor, or, with lower resolution, in a larger portion of the screen. (Copies of "screen captures" from the iCraveTV site are appended hereto at Tab A.)

From the outset our intention has been to provide this service only to Canadians. Advertising to Canadians constitutes our revenue base and, due to limitations on our systems' capacity, users coming from outside our market cost us money we cannot recover. We initially tried to enforce this geographic restriction by relying on the honesty of users. First, we required someone wishing to use the video portion of the web site to enter a 3-digit Canadian telephone area code in order to confirm that he or she was located in Canada. If the user entered a number that was not a Canadian area code, a screen appeared denying that user any further access. If the user entered a Canadian area code, a second screen appeared further warning that the site is intended only for use in Canada, and requiring the user to make the affirmative certification that he or she was located in Canada, by clicking "In Canada," in order to proceed further. A user then reached the "Terms of Use" screen, which also stated that the site was solely for the use of those located in Canada and required acceptance of terms that included use only in Canada before proceeding further. Thus, in order to access the programming portion of the iCraveTV Web site, a user had to affirmatively state, repeatedly, that he or she understood that the site was for use only in Canada and that he or she was in fact located in Canada.

Unfortunately, concern has been expressed that these precautions did not prove sufficient to keep users from outside Canada from accessing the site. I will discuss this problem further in a moment, but I want to address first the issue of the source of our television broadcasts, because we think that it has been the subject of unfair criticism. iCraveTV picked up signals broadcast from the United States into Canada, and because we had not first entered into license agreements with the United States copyright holders, we have been accused of being "pirates." This criticism is unfounded and ignores two critical facts. First, it is perfectly legal for us to pick up these broadcast signals, which are available free to everyone who has an antenna. These programs were intentionally broadcast into Canada as well as to the United States, and the broadcasters took advantage of that fact, by, for example, obtaining advertising revenue based on their Canadian as well as their American audience. Because American copyright law does not extend beyond the borders of the United States, we did not violate American law, or infringe American copyrights, by picking up the signals in Canada or by digitizing and retransmitting them over the Internet in Canada.

Since we operate in Canada we do, of course, have to comply with Canadian law, and we have made every effort to do so. Under Canadian law, it is not copyright infringement to retransmit over-the-air broadcast signals, provided that, among other things, the retransmitter pays royalties in accordance with tariffs set by the Canadian Copyright Board. The majority of retransmission royalties paid by Canadian retransmitters are now, in fact, paid to collectives representing United States copyright owners, including the major Hollywood studios, broadcasters and major league sports leagues. Under this statutory procedure, the retransmitter has an automatic compulsory license to communicate the retransmitted broadcast signals to the public and needs no consent or permission from either the original broadcaster of the retransmitted signals or from any of the owners of the copyrighted works that were included in those signals. This arrangement is not unlike the compulsory license for retransmission of network programming via satellite that now exists under United States law. (A copy of Section 31 of the Canadian Copyright Act is appended hereto at Tab B; an op ed piece written by a Canadian law professor, Hudson Janisch, discussing iCraveTV in the context of the evolution of Canadian broadcasting and copyright law is appended hereto at Tab C.)

The retransmission regime established by the Canadian Copyright Act is not limited to specific technologies for the delivery of retransmitted broadcast signals. As a result, the Canadian retransmission regime applies equally to retransmissions made over the Internet as to retransmissions made via other media, including cable and satellite. iCraveTV has requested the Canadian Copyright Board to set tariffs

for royalties for transmissions via the Internet of television programs. It should be noted, moreover, that under Canadian law Internet transmissions originating from servers located in Canada are deemed to take place in Canada, even if received outside Canada, and are subject to royalties payable in Canada. Thus, if a tariff for Internet transmissions is established in Canada, as iCraveTV has sought, the royalty that Canadian Internet retransmitters will pay can be expected to take into account the possibility of receipt of the retransmissions outside Canada. (An affidavit from another Canadian law professor, Michael Geist, discussing the application of Section 31 of the Canadian Copyright Act to iCraveTV's service is appended hereto at Tab D.)

Because iCraveTV was a pioneer in this area, the Copyright Board had not established a tariff for Internet transmission of television programs when we began operation. In order to arrange fair voluntary payments until that tariff was established, our Canadian solicitors contacted the collectives that collected royalty payments for over-the-air broadcasts and tried to discuss such an arrangement with them. Those collectives were unwilling to work with us to establish such a payment arrangement, so our solicitors proposed to the Copyright Board that the Board establish an interim Internet retransmission tariff. Counsel for certain of the collectives sought additional time to respond, thereby delaying the Board's action on the tariff, and the Board has not yet had the opportunity to act. During this process, we have reiterated to the broadcasters our willingness to negotiate royalty payments. It should be noted that the "collectives" include all of the rights holders involved, including members of the MPAA, NFL and the "border broadcasters". Indeed, a majority of the funds dispersed by the Board go to United States rights holders for carriage in Canada. (A copy of an editorial from the Toronto Globe and Mail discussing iCraveTV's offer to pay royalties under the Canadian copyright regime is appended hereto at Tab E.)

We are, you can see, acting in good faith to follow the laws of the country in which we operate. Although Canadian copyright law differs in some ways from American law, it is grounded in the same principles, developed in English law, as is American copyright law, and I am sure that the United States Congress respects the integrity and good faith of Canadian law in this as in other respects. I recognize, of course, that there are countries in the world that do not operate under similar copyright principles and do not respect the work of content providers, and the existence of such countries raises some concerns when we are dealing with the "World Wide Web." But it is important not to be unduly influenced by the existence of such unsatisfactory copyright regimes.

First, Canada is not such a country, and the conduct of a company that operates within the laws of an enlightened country such as Canada, which fully respects the creative activities of the authors of copyrighted works, should not be judged or restricted because of the existence of countries that make little effort to stop copyright piracy. Second, one of the essential characteristics of the World Wide Web is that it *is* worldwide, which means that it can be accessible from countries whose laws we may disapprove of in many respects. If the possibility of such access is allowed to govern the activities of countries where the principles underlying our common Anglo-American heritage are respected, the benefits of the Web will be greatly reduced.

This brings me back to the issue I referred to before and which has been the primary source of concern in the lawsuit brought in federal court in Pittsburgh against iCraveTV by a number of major United States content providers. This is the fact that, despite our making it absolutely clear to users that only those located in Canada were permitted to access the video capability of the iCraveTV web site, it has been alleged that this restriction was not respected by all users, and that some users located in the United States downloaded the video stream and viewed programs with American copyrights. As a result, the federal court has entered a preliminary injunction that could be read as holding us responsible if *any* of our video programming is accessed from the United States, even by hackers. Because we have not yet completed enhancing our security system, this decision has resulted in our decision to shut down the video portion of the site for now. We will have an opportunity to present our case to the court and seek modification of the terms of the order within 90 days.

In the meantime, we are working on security procedures that will make it extremely difficult for anyone who is not located in Canada to access the video stream from the site. There are two aspects of such procedures. First, we have to strengthen the methods used to deny to those outside Canada access to the video via the "front door," *i.e.*, the iCraveTV home page. In addition to the procedures we previously used that rely on the honesty of users, we are implementing software that determines the location of the user's Internet Service Provider and will permit ac-

cess only to those using ISPs that are located in Canada and serve only Canadian residents. Second, we are developing software and procedures that will prohibit access via the “back door,” *i.e.*, by those who use computer commands to avoid the iCraveTV home page and go directly to the computer that provides the video stream. In an MPAA letter to us in late December, some suggestions, in a different form, were made that we will incorporate into our final design.

As far as we have been able to learn, such Internet security, restricting access to a site to users within a particular geographic area, has not yet been implemented anywhere, in part because it has not previously been required. Its development and implementation has been more difficult, expensive, and time-consuming than we had expected, but we are making good progress. Whatever the difficulties, before we return to court to seek a change in the court’s current order, we intend to implement security procedures that will make it extremely difficult for anyone not located in Canada to access video from the iCraveTV web site. However, we do not pretend that we can guarantee that no determined hacker will ever be able to access that video. As we already knew, but the recent attacks on such Internet leaders as Yahoo and Amazon have highlighted, determined hackers, thrill seekers or hired guns can wreak havoc on even the strongest and most secure of Web sites. Any regime of laws that governs the Web must take account of that fact and should not place impossible demands on sites that make serious good faith efforts to provide the appropriate security.

In our case, for example, the plaintiffs, a powerful array of studios, networks, and sports leagues, have alleged that by providing a site that could be accessed improperly by persons located in the United States to receive streamed copyrighted audiovisual works, we have infringed the exclusive right of the copyright owners to perform their works “publicly” in the United States. However, once a web site operator located outside the United States has made determined efforts to keep persons in the United States from accessing the video portion of a site, thereby preventing substantially all persons located in the United States from accessing it, excepting only persons having a high degree of computer security expertise and deliberately using such expertise to avoid the site’s safeguards against such access, I do not think that such a web site operator can fairly be said to be “publicly performing” the work in the United States. To the contrary, any performance in the United States in the face of such safeguards will be a very private one, brought about only by the expertise and effort of a hacker who is determined to get around serious barriers so as to access something he or she has been expressly prohibited from accessing.

Imposing a standard that would find a Canadian web site operator, operating in accordance with Canadian law and having committed no other violation of American law, to have infringed an American copyright—and so be subject to being, in effect, shut down by an American court—simply because a hacker may be able to get around carefully implemented security procedures, would, we respectfully submit, unfairly interfere with the legitimate operation of Canadian companies and unduly inhibit the development and usefulness of the Internet. The United States Supreme Court, in its decision in *Reno v. ACLU* that invalidated portions of the Communications Decency Act of 1996, compared the Internet to “a vast library including millions of readily available and indexed publications and a sprawling mall offering goods and services,” and held that it was entitled to the full scope of First Amendment protection. Indeed, the Court contrasted the freedom of cyberspace with the governmental supervision and regulation that has traditionally been imposed on the broadcast industry. The Internet, it observed, is not as invasive as radio and television, and content does not appear on one’s computer screen unbidden or “by accident.” This point is all the clearer when a web site operator has employed substantial security technology to *disable* certain users—users outside Canada, in our case—from accessing certain content. Even though your First Amendment may not be directly applicable to the activities of a Canadian company operating in Canada, it would surely be contrary to the vision of the freedom and promise of the Internet embraced by the Supreme Court in *Reno v. ACLU* to impose unrealistic requirements that would expose legitimate Internet operations outside the United States to crippling penalties in American courts because of the malicious activities of some hackers.

Indeed, American law already recognizes that the universal accessibility of web sites cannot be permitted to make it impossible to conduct business otherwise in compliance with applicable law, so long as reasonable security measures are taken. The Securities and Exchange Commission, addressing the question of whether offshore Internet offers are being made in the United States (and thus trigger registration obligations), reasoned that implementation of adequate measures to prevent persons in the United States from participating in the offshore Internet offer would lead to the conclusion that the offer was not occurring in the United States. The

SEC recognized that the types of procedures its suggested could not guarantee that someone from the United States who was determined to get around the procedures could not purchase securities from the site. It did not require perfection, only serious efforts that would discourage the great majority of potential purchasers located in the United States. See Statement of the Commission Regarding Use Of Internet Web Sites To Offer Securities, Solicit Securities Transactions Or Advertise Investment Services Offshore, March 23, 1998, available at <http://www.sec.gov/rules/concept/33-7516.htm>.

With the security that we will be prepared to implement, we believe that any "leakage" into the United States will be minimal and could not reasonably be considered to be a "public performance" in this country under United States copyright law. The level will be well below the decades of "leakage" that have been tolerated between the United States and Canada for decades when radio and television broadcasters signals cross the border. We will be operating only in Canada under a copyright regime that we hope will soon establish a fair tariff under which we can pay royalties to American copyright holders for carriage in Canada. iCraveTV will then be able to provide the service to Canadians that it was intended to provide. That service was not, I want to emphasize, to compete with over-the-air broadcasting. Anyone who has seen video on a 14-17 inch computer monitor will know that it is not a substitute for television. Typically the video picture takes up only a small portion of a computer monitor that is itself small compared to current television screens, and if the video is enlarged it loses resolution. We expect the technology, and so the quality of the picture, to improve, but it will not in the foreseeable future improve to the point where someone who owns a television set—which includes, of course, far more people than own computers—will want to watch a TV show on a computer rather than on TV.

Instead, iCraveTV serves a different audience. It serves those who cannot receive broadcast television, such as those in the shadow of the huge CN broadcast tower in Toronto, and those in universities and offices who cannot receive broadcast television and do not have cable access. And it serves those who are working on a computer and would like to be able to view a television program in a corner of their screen. In these ways we provide a real service to some people, but it is not a service that provides any competition to over-the-air broadcasters or cable or satellite retransmitters. This is confirmed by the limited capacity of the video server used by iCraveTV: we can serve no more than about 4,000 viewers at a time. This is hardly a threat to television broadcasters with their tens of millions of viewers, and the technology will not permit it to become such a threat, even if we wanted it to, which we do not.

What we do want to do is provide audiovisual content over the Internet, of the type we started to provide last year, as well as new forms of content, such as video that has not been broadcast, and, we hope, interactive video. We want to do this in accordance with Canadian law and with reasonable safeguards that will keep our broadcast retransmission service from being accessed from outside Canada. We do not want to take anyone's property, and we are pleased to, and have been trying to, work with content providers to ensure that they are properly compensated under the copyright regime of our country. We very much hope that, as the United States develops its laws to enable its citizens to take advantage of the immense opportunities offered by the World Wide Web, they will not be developed or construed in a way that will keep your neighbors from fairly benefiting from those opportunities as well.

Thank you, Mr. Chairman and members of the Subcommittee, for your interest in iCraveTV. I would be pleased to answer any questions you may have. [Additional submissions are retained in subcommittee files.]

Mr. TAUZIN. Thank you, Mr. McCallum. Let me announce to the committee that Mr. Shimkus has gone to vote early. He will come back and take the Chair so that I can make the vote. We will continue the hearing.

I am pleased now to welcome former Senator David Boren, our friend from Oklahoma and now President of Oklahoma University and also on behalf of the National Collegiate Athletic Association. Senator Boren.

STATEMENT OF HON. DAVID L. BOREN

Mr. BOREN. Thank you very much, Mr. Chairman and Mr. Markey and members of the committee. It is a pleasure to be back among you, and I want to thank my friend from Oklahoma, especially for his warm welcome, Congressman Largent. We are privileged to have his son at the University of Oklahoma, and now we have his daughter at the University of Oklahoma. So we feel especially a close relationship.

I am here as president of the University of Oklahoma today to testify on behalf of that institution and also on behalf of the NCAA. University of Oklahoma is one of nearly 1,000 universities and colleges which comprise the NCAA and is devoted to the well being of over 330,000 male and female student athletes across the country.

And, of course, at universities, we recognize all of the benefits of the Internet. We are excited by all the possibilities. We are already benefiting by the educational opportunities, but we also understand the vital importance of intellectual property to the collegiate athletic community and the need to preserve copyright owners' interests as we embrace these opportunities of the Internet about which we have such enthusiasm.

In the world of intercollegiate athletics, the revenue derived from copyrighted sports programming is absolutely essential to our programs. The University of Oklahoma, our athletic department budget for this coming academic year is \$23.6 million, and we are not atypical. This budget funds the operation of 20 men's and women's varsity teams. OU student athletes who are members of these teams receive over \$4 million in athletically based scholarships and financial aid.

It is important to know that of the nearly 1,000 NCAA member institutions, fewer than 80 athletic departments are financially self-sufficient. Fewer than 80 out of 1,000. The University of Oklahoma, I am happy to say today, given the fact that we have had a good basketball and football season this year, is among this small group; however, all collegiate athletic departments, including ours, confront significant budget pressures while simultaneously striving to expand opportunities for the student athletes. We have to determine what sports can we afford, when are there tradeoffs between our academic mission and our academic budget, and what we can afford to invest in athletics.

Television rights for the broadcast of men's football and basketball are a significant source of revenue for our program and for others. The revenue is essential to our institutions to help us support the funding of athletic scholarships and operations in our 18 non-revenue producing sports. The revenue received by the athletic department from television rights comes from, of course, big television agreements for men's football and basketball, conference participation and football games, and 87 percent or \$62 million will come from basketball and football this year.

It is then distributed, along with the CBC funds, through our basketball agreements back to the university. For us, just to give you an example, that is \$4 million from our conference, and we have an additional almost \$2 million that is generated with agree-

ment through what we call Sooner Sports Properties through radio rights and the rest.

Now to put that into perspective, that's over a fourth of our athletic department budget. If that revenue is there, you face the kind of choice; for example, it costs a million dollars for every percentage increase in faculty salaries. That tells you that that amount of revenue generated when you have to talk about tradeoffs is 6 percent of faculty salaries. I can make the same kind of comments about libraries, and then you get into doing away with opportunities in those sports which do not generate so much revenue for both women and for men. These are very significant tradeoffs.

So as you can see, sports, like movies and music, this is intellectual property, and the copyright attached to sports programming is a vital source of revenue to the athletic community. We have created our own SoonerSports.com. We are utilizing the Internet where fans can access a number of video and audio offerings, and we are already exploring new ways to enhance and deliver programming. When we had the advent of satellite and cable television, of course sports were among the first to embrace it to find ways to expand our offerings.

Now, of course, the focus of this hearing, it really is brought about by the iCraveTV case which is already will be discussed. This case reveals how some could use the Internet to ignore the intellectual property rights, deprive the copyright owners of the benefit and value and control of their works. This case not only posed a threat to copyright owners here in the United States, but threatened international sales and distribution rights, and once sports programming was retransmitted over the Internet, the entire world had unlimited access.

I am not one quick to say that I can profess to be an expert on copyright law. I do, however, want to urge this body to resist the kind of knee-jerk reaction of granting a compulsory license for the Internet. Compulsory licenses violate a fundamental principle of the free market, and it is not a wise oversight to take intellectual property out of the patrol of those who create it. Under a compulsory license regime, I worry, for example, that a gambling web site legally transmitting NCAA football and basketball games to ensure their clients could wager without missing a play could be established. Without the control of the property copyright holders, they cannot ensure that their works will be used in an acceptable or an appropriate way.

My message is really simple. When it comes to the Internet, I urge you to let the marketplace work. It is already beginning to work. For example, the NCAA has recently negotiated and awarded CBS with Internet rights to men's basketball tournaments for the next 11 years, and this agreement benefits viewers and providers, NCAA, and member institutions and more importantly our students a valuable source of revenue. Just this month it has been reported in the Wall Street Journal that baseball is moving in an similar direction.

The one thing that I have learned about it, it has been especially a clear lesson since I left this great institution, is that we must always legislate, keeping in mind that there can be unintended consequences of our actions and particularly dealing with the situation

that is so fluid, changing so quickly where already those of us who are creating this property have a very strong incentive to get it to the widest possible audience as soon as possible.

I would say let's look at this for a while. Let's see how it evolves, and my guess is the marketplace is going to take care of itself, provide the competition, and with the legal rights already in place, protect those who are creating the property. So I urge you to let the marketplace work, make sure that while we have open competition and the widest possible distribution of this property including our sports programming, that we do so in a way that protects the interests of those who own that property and have a right to it.

Thank you very much for letting me be with you today.

[The prepared statement of Hon. David L. Boren follows:]

PREPARED STATEMENT OF DAVID L. BOREN, PRESIDENT, UNIVERSITY OF OKLAHOMA

Mr. Chairman, Congressman Markey, thank you for the opportunity to testify before you today on the issue of video on the Internet. As President of the University of Oklahoma, I am appearing on behalf of that great institution and on behalf of the National Collegiate Athletic Association (NCAA). The University of Oklahoma is one of nearly 1,000 universities and colleges that comprise the NCAA. This member organization is devoted to the regulation and promotion of intercollegiate athletics for over 330,000 male and female student-athletes.

I am here today to discuss the vital importance of intellectual property to the collegiate athletics community and the need to preserve copyright owners' interests as we embrace the new opportunities of the Internet.

VALUE OF COPYRIGHT TO THE INTERCOLLEGIATE ATHLETICS COMMUNITY:

In the world of intercollegiate athletics, the revenue derived from copyrighted sports programming is essential to our programs. At the University of Oklahoma, our athletic department budget for the 1999-2000 academic year is \$23.6 million. This budget funds the operation of 20 men's and women's varsity teams. O.U. student-athletes who are members of these teams, receive over \$4 million in athletically-based scholarships and financial aid.

It is important to note that of the nearly 1,000 NCAA member institutions, fewer than 80 athletics departments are financially, self-sufficient (i.e., revenues exceed expenses). The University of Oklahoma is fortunate to be among this small group. However, today all college athletic departments, including ours, confront significant budget pressures while simultaneously striving to expand opportunities for their student-athletes.

Television rights fees from the broadcast of men's football and basketball are a significant source of revenue for the University of Oklahoma athletics program. This revenue is essential to our institution as it helps support the funding of athletics scholarships and the operation of our 18 non-revenue sports for both men and women.

The revenue received by our university athletic department from television rights fees comes from three sources. The largest portion of revenue is generated by our athletic conference's (the Big 12) television agreements for men's football and basketball and from conference member participation in football bowl games. This year, the Big 12 conference will receive 87% of its revenues, or \$62.4 million, from television rights fees for men's football and basketball. This revenue is divided among the conference's 12 member institutions.

Another important source of revenue is obtained from the television rights fees paid by CBS for the NCAA Division I Men's Basketball Tournament. In total, the University of Oklahoma receives more than \$4 million from the Big 12 Conference and the NCAA; all of this coming from rights fees paid for copyrighted collegiate sports programming.

In addition, the University of Oklahoma athletic department negotiated a \$1.8 million agreement with Sooner Sports Properties for radio rights, a select number of televised basketball games and the rights to operate our Sooners.com Internet site.

As you can see, sports, like movies and music, is intellectual property. The copyright attached to sports programming is a vital source of revenue to the athletics community and the preservation of these rights is essential in the dawning of the digital age.

SPORTS COPYRIGHT HOLDERS EMBRACE NEW TECHNOLOGY:

The University of Oklahoma recognizes the unique opportunities the Internet presents and is already exploring ways to supply college sports content over this new communications medium. We have created www.soonersports.com where fans can access a number of video and audio offerings.

In fact, both the college and professional sports leagues have always been quick to take advantage of new technologies in the delivery of sports programming. For example, with the advent of cable and satellite television, today sports fans can watch thousands of hours of college and professional games on ESPN and other cable networks. In addition, through agreements with DirectTV, special packages ensure that viewers can have access to every NFL game as well as each contest during the NCAA basketball tournament.

Now, with the emergence of the Internet, sports entities are already exploring new ways to enhance and deliver their programming. Furthermore, in November 1999, the NCAA became the first sports organization to sign a major television pact that included the awarding of Internet rights to CBS. Video streaming of college sports contests will undoubtedly expand if copyright holders can be assured that they will maintain control of their works. After all, as long as copyright holders maintain control over their intellectual property on the Internet, it will be in their best interests to pursue new technological innovation.

THE INTERNET MUST NOT POSE A THREAT TO THE PRESERVATION OF INTELLECTUAL PROPERTY:

At the focus of this hearing is the iCraveTV case. This case reveals how some people can use the Internet to ignore intellectual property rights and deprive copyright owners of the value, benefits and control of their works. As we are all aware, commencing on November 30, 1999, iCraveTV.com streamed 17 over-the-air television stations from Toronto, Canada and Buffalo, New York on the Internet, 24 hours a day around the world. During this time, those that paid substantial rights fees for NFL, NBA, NHL, and NCAA basketball and football games were faced with having the value of their programming diluted. iCraveTV not only posed a threat to copyright holders here in the U.S., but it also threatened international sales and distributions rights. Once sports programming was retransmitted by iCraveTV over the Internet, the entire world had unlimited access.

While I certainly do not profess to be an expert on copyright law, I do, however, want to urge this body to resist granting a compulsory license for the Internet. This simply is not a good idea. Compulsory licenses violate fundamental principles of capitalism and the free-market. Furthermore, it is not wise oversight to take intellectual property out of the control of those who create it. Under a compulsory license regime, I can easily envision a gambling Web site legally retransmitting NCAA football and basketball games to ensure their clients can wager without missing a play. Without control of their property, copyright holders cannot ensure that their works will be used in an acceptable or appropriate manner.

MESSAGE—ALLOW THE FREE-MARKET TO OPERATE:

My message to you today is simple—When it comes to the Internet, I urge you to let the marketplace work. It is already working. For example, the NCAA has recently negotiated and awarded CBS with the Internet rights to the men's basketball tournament for next 11 years (beginning in 2003). This agreement benefits viewers and provides the NCAA and its member institutions (and most importantly, our students) with a valuable source of revenue.

As a college president, I am acutely aware of the importance to the university community of preserving our intellectual property rights. By allowing the market to work while respecting intellectual property rights, Congress can ensure that universities will provide greater and better services to our students, faculty, staff and our communities.

Mr. SHIMKUS [presiding]. Thank you, Senator.

We will now move to Mr. Bob Roback, President of LAUNCH Media. He will talk on the aspect of the streaming issue as far as music videos to which is all part of the this debate.

So welcome. Your written statement is submitted for the record. If you could summarize, and you have 5 minutes.

STATEMENT OF ROBERT D. ROBACK

Mr. ROBACK. Thank you on behalf of the over 200 employees of LAUNCH Media. Thank you all for inviting me to testify today at this important hearing. I'm Bob Roback, president and cofounder of LAUNCH Media, a publicly traded, California-based company that for over 6 years has developed innovative and compelling ways to help consumers discover new music through interactive media and in particular the Internet where we operate our music destination at LAUNCH.com.

We founded LAUNCH Media in 1994 in response to a growing demand from the music consumer; specifically, music consumers have long relied on traditional media such as radio and MTV as ways to discover new music. Record companies and artists also profited from the market's current opportunities created by these traditional outlets, and certainly the outlets themselves have benefited handsomely.

The nature of traditional broadcast media, however, is such that it must be programmed at the consumer. In the music space, MTV is a perfect example of how broadcast media has negatively impacted both the music consumer and the record industry. In response to its advertisers who were frustrated that MTV's valuable viewers were switching in and out of the channel based on whether the currently played music video was appealing, MTV embraced a new programming strategy around half-hour lifestyle shows that kept viewers tuned it through the commercials.

While this strategy has fueled impressive growth at MTV, it has significantly curtailed the number of music videos played, reducing the opportunities for consumers to discover music and for music companies to market their repertoire. By creating an intent destination for consumers to discover new music through music video, LAUNCH Media helps artists and copyright owners reach consumers that otherwise might not know of their works.

We have worked very closely with the major record companies to ensure that all our video content is appropriately licensed and that copyright holders are appropriately compensated. I can assure you that in spite of bandwidth limitations, there is a large audience of music consumers that thirsts for such video content. We currently stream over 2 million music videos per month to more than 2.8 million registered members.

In our experience, LAUNCH provides value consumer exposure to music that would otherwise not be effectively marketed, and we are able to turn new consumer interests directly into a purchase that may not otherwise have happened. We firmly believe that LAUNCH should not be limited in its pro-consumer competitive offering by technology-based laws that favor cable or satellite in contrast to the Internet. If the content is compelling, the service reliable, and the price fair, then consumers do not care whether it was delivered through a cable, a satellite dish, a terrestrial broadcast, or over the Internet.

The law should be equally technology neutral. As a general premise we believe that distributors of content should be permitted to compete against one another regardless of technology. LAUNCH's long-term goal is to be the consumer's content provider of choice. We are eager for the day when webcasting is on a level

playing field with terrestrial cable and satellite television including with respect to compulsory retransmission licenses.

Having stated the long-term goal of open competition and broad consumer choice, let me also clearly state that LAUNCH has no immediate plans to seek a compulsory television retransmission license or to seek legislation that guarantees our ability to obtain such a license, particularly as the law exists today.

Most importantly, however, while we at LAUNCH may consider new forms of music-related programming, we are not certain that we can develop a compelling business model around webcasting preprogrammed broadcasts whether retransmitted or created specifically for the web.

Let me reiterate the ultimate desire of LAUNCH, that consumers be empowered to listen, watch, and purchase entertainment and educational content how, when, and where they choose and by whatever technology they enjoy most. Competition is the foundation of the American economy, and entrenched industries should never be exempt from competition merely because the laws on the books were developed when they were the only ones in the room.

Thank you very much for having me.

[The prepared statement of Robert D. Roback follows:]

PREPARED STATEMENT OF ROBERT D. ROBACK, PRESIDENT, LAUNCH MEDIA, INC.

Mr. Chairman and members of the subcommittee, on behalf the over 200 employees of LAUNCH Media, thank you for inviting me to testify today at this important hearing regarding the Internet's future as a competitively-priced, consumer-friendly distributor of audiovisual programming. I am Bob Roback, President and Co-Founder of LAUNCH Media, a publicly traded (NASDAQ NMS: LAUN) California-based company that for six years has developed innovative and compelling ways to help consumers discover new music through interactive media. Our distribution methods over the years has included a monthly CD-ROM and, of course, the Internet where we operate our music destination at www.launch.com.

Mr. Chairman, I am pleased to be joined before you today by RealNetworks' Alex Alben. RealNetworks is a key strategic partner of LAUNCH and a fellow member of the Digital Media Association. DiMA has more than 40 members that develop and deploy digital technologies to market and distribute music and entertainment media to consumers worldwide over the Internet.

Earlier this month the President of BMG Entertainment, a company that owns one of the world's largest repertoires of copyrighted music and media, said, "it has been proven time and again that new media in entertainment don't kill pre-existing media." I am here to tell this Committee that we are in full agreement with this statement. LAUNCH and our DiMA company colleagues market, disseminate, popularize, and sell pre-existing media. Internet media companies add new value for the music industry, and expand the opportunity pie so dramatically that copyright owners and creators get a larger slice than ever before. In our experience, LAUNCH provides valuable consumer exposure to music that would otherwise not be effectively marketed and we are able turn new consumer interest directly into a purchase that may not otherwise have happened.

We founded LAUNCH Media in 1994 in response to a growing dilemma for the music consumer. Specifically, music consumers have long relied on traditional media such as radio and MTV as ways to discover new music. Record companies and artists also profited from the marketing opportunities created by these traditional outlets and certainly the outlets themselves have benefited handsomely.

The nature of traditional broadcast media, however, is such that it must be programmed at the consumer. In the music space, MTV is a perfect example of how traditional broadcast media has negatively impacted both the music consumer and the record industry. In response to its advertisers who were frustrated that MTV's valuable viewers were switching in and out of the channel based on whether the currently played music video was appealing, and therefore were not sitting through commercials, MTV embraced a new programming strategy around half-hour lifestyle shows that kept viewers tuned in. While this strategy has fueled impressive growth at MTV, it has significantly curtailed the number of music videos played, reducing

the opportunities for consumers to discover music and for music companies to market their repertoire. Similarly, consolidation in the radio industry has led to shorter playlists and more homogenized formats that, in turn, limit consumer access to new artists and diverse music styles.

By creating an Internet destination for consumers to discover new music, LAUNCH Media helps artists and copyright owners reach consumers that otherwise might not know of their works. LAUNCH Media has been built on the premise that an intermediary can develop a relationship with both the creative community and the consumer, and deliver value to both sides of an opportunity. The power of the Internet is that the consumer is in control. We believe that if consumers can access content where they want, when they want, and in a format or medium they want, artists and copyright owners will benefit so long as the Constitutionally-mandated economic and legal balance between owners and consumers of copyrighted content is not undermined.

One of the most popular content areas on launch.com is our music video section. This area is already populated with over 2000 music videos created by both the record companies and exclusively by LAUNCH in our studios. We continue to add hundreds of new videos each week.

Our focus on video content may surprise you in light of the fact that most consumers still access the Internet at relatively low connection speeds and, therefore, receive lower quality video. Notwithstanding these limitations, I can assure you that there is a large audience of music consumers that thirst for such video content. We currently stream over 2 million music videos per month to more than 2.8 million registered members. We expect that the addition of more video content, and the advent of broadband technology, will only serve to push these numbers higher. Looking closely at our audience and at the most popular videos it is clear that much of this consumer demand for music video content on the Web is driven by the scarcity of music videos on broadcast, cable and satellite.

We have worked very closely with major record companies to ensure that all of our video content is appropriately licensed and that copyright holders are appropriately compensated. We count Warner Music Group, Sony Music and EMI among our close record company partners.

Mr. Chairman, we firmly believe that LAUNCH should not be limited in its pro-consumer competitive offerings by technology-based laws that favor cable or satellite in contrast to the Internet. This Committee and all the witnesses before you know that consumers purchase entertainment programming based on quality, price and the reliability of the distribution service. If the content is compelling, the service reliable and the price fair, then consumers *do not care* whether it is delivered through a cable, a satellite dish, a terrestrial broadcast or over the Internet. The law should be equally technology-neutral.

As a general premise, LAUNCH Media and the Digital Media Association believe that distributors of content should be permitted to compete against one another regardless of technology: more entrants into the programming distribution marketplace will bring more competition, lower prices and higher quality. If satellite television spurred cable television to improve, then the Internet will, in time, lead to even more improvements and better service for consumers. I believe that launch.com's early success in the music video space suggests that this has already started. In that context, let me be very clear: LAUNCH's long-term goal is to be consumers' content provider of choice, and we are eager for the day when we have an equal opportunity to compete for consumers' allegiance, when webcasting is on a level-playing field with terrestrial, cable, and satellite television—including with respect to compulsory retransmission licenses. Similarly, DiMA members believe that consumers deserve full choice—full competition—and a level-playing field that lets the marketplace rather than the law determine winners.

I expect, Mr. Chairman, that you and members of this Committee may be concerned about the effect of the Internet on local broadcasters and local news service, which is a core component of every thriving American community. I propose to you, Mr. Chairman, that local television would not suffer at the hands of the World Wide Web, but rather would thrive. When Chairman Tauzin can watch your local Louisiana television news, no matter how late the House debates proceed or where in the world you might be that night, the Louisiana television station will know it has more viewers, will charge more for advertisements, and the local economy and broadcast service will benefit. Mark Cuban started broadcast.com because his local network stations in Dallas did not broadcast Indiana University basketball games. With the Internet, Chairman Tauzin could always watch LSU games, and perhaps even the local high school games.

We need only to look to the experience of other media, Mr. Chairman, to see that national distribution does not harm localism. Major metropolitan newspapers are

available in major cities in other states, for decades in hard copy and in the last few years over the Internet. Yet, our nation's local newspapers thrive and retain their local character both in print and on-line. Thousands of local radio stations are available today over the Internet, broadcasting their signals to an expanded local and national audience. People tune to these out-of-market stations to hear first-hand local news, musical tastes and cultural and sporting events. For the stations, Internet broadcasting expands their market—after all, many more people have computers at their desks than radios. For the consumer, Internet broadcasting brings new information and understanding, and provides a cure for homesick sports fans, college students and Congressional legislative aides.

Making television network programming available over the Internet similarly will not harm localism or local stations. Indeed, hundreds of local television stations already are broadcasting their own local programming over the Internet, to tens of thousands of viewers. But when the local news is over, and the stations resume transmitting network shows, the computer screen goes blank. If the Internet is ever to provide effective competition to cable and satellite services, with the resulting benefits to consumers, Internet media companies must find a way to license the entire local station's broadcast signal to the viewing audience.

Having stated the long-term goal of open competition and broad consumer choice, let me also clearly state that LAUNCH has no immediate plans to seek a compulsory television retransmission license or to seek legislation that guarantees our ability to attain a compulsory television retransmission license, particularly as the law exists today. Candidly, Internet technology to ensure limited geographic distribution is just beginning to approach the levels of security generally associated with cable television, and we are not yet confident that all other technological hurdles have been overcome. Most importantly, however, while we at LAUNCH may consider new forms of music related programming, we are not certain that we could develop a compelling business model around webcasting pre-programmed broadcasts, whether retransmitted or created specifically for the Web.

Mr. Chairman, let me reiterate the ultimate desire of LAUNCH and the Digital Media Association: that consumers be empowered to listen, watch and purchase entertainment and educational content how, when and where they choose, and by whatever technology they enjoy most. Competition is the foundation of the American economy, and entrenched industries should never be exempt from competition merely because the laws on the books were developed when they were the only ones in the room. The law must be open to evolution and adaptation, to assure fair treatment and equivalent rights for new businesses using new technologies.

Thank you.

Mr. SHIMKUS. Thank you for your testimony.

We will next go to Mr. Stuart Beck, President of Granite Broadcasting Corporation. Again, your full testimony was submitted for the record, and if you would summarize for 5 minutes.

STATEMENT OF STUART J. BECK

Mr. BECK. Thank you, sir, and thank you all. Thank you for the opportunity to appear before you today to discuss video and broadcasting on the Internet. As you have said, my name is Stuart Beck, and I am the president and I am the cofounder of Granite Broadcasting Corporation.

Granite, which was founded 12 years ago, owns and operates nine television stations around the country. Our markets include Detroit, Fort Wayne, Fresno, Peoria, Bloomington, San Francisco, San Jose, Syracuse, and Buffalo. Each of our television stations is distinctly community oriented. The backbone of our service is the strength of your local daily news, weather, and sports operations.

For many, local television is the primary source of accurate information about the people and events in their communities, and although the Internet has indeed begun to supplement television programming in this regard, as I will explain, as such, the community building function of the programming provided by local operations cannot be over emphasized.

My dad was a local broadcaster, and I am proud to follow in his foot steps, but times have changed broadcasting, and I actually think they have changed for the better. Technology is providing us with expanded reach to our customers by addressing a wider audience and by supplying more comprehensive news and information.

Granite is recognized as an innovator in the development of new media services that combine TV and Internet platforms. We have established complimentary web sites for our local stations on which we stream live news coverage from our stations and post items of local interest such as traffic, weather, school closings, and high school sports. We have put managing editors into each of our news rooms to re-purpose our news content and put it out on the web.

We have spent a lot of money on administrative systems that allow the people in our news room to type in plain English on a computer screen that which will appear on the web once extracted from our television programming. Our services, therefore, include webcasts which we love, as well as supplementary news content local advertising and other unique features.

The Granite Group includes WKBW in Buffalo, New York. That's the No. 1 station is Northern New York, with due respect to my colleague, Mr. Karpowicz. WKBW TV is an ABC affiliate that has been an integral part of the Buffalo community for many years. The station launched its related web site WWW.WKBW.com in 1996. It receives about 300,000 page views, a month and members of the Buffalo community rely on the site for timely news and information about community events.

Last year, Granite learned that another web site, iCraveTV.com was also carrying WKBW's local programming and other copyrighted works including all ABC network programming. iCraveTV was converting our TV signal into computerized data and streaming it over the Internet from its web site.

What Mr. McCallum failed to tell this committee is that not only was iCrave carrying our programming without authorization, but the Internet site was displaying our programming on web page surrounded by iCrave advertisements which presumably were sold by McCallum. Thus it would be possible for a local Ford dealer to sign a contract for exclusive rights for WKBW's local 11 p.m. newscast, only to find its advertisement on iCraveTV surrounded by competing advertisements for Chevrolet. Similarly, an advertiser may purchase a banner ad for the KBW web site during the airing of a particular program, only to find it replaced by a competitor's banner advertisement on iCrave's site.

On January 20, a coalition of TV networks, studios, and sports leagues got a temporary restraining order against iCrave, a fairly rare legal remedy but employed in this case. Under the court order, iCrave is prohibited from infringing on rights set forth in copyright and trademark law, and we are satisfied with how effectively our courts enforced the rule of law in this situation. It is clear that under the U.S. copyright law it is illegal to take copyrighted programming such as the stuff we spend so much money producing and stream it on the Internet without permission of the owner. iCrave plainly and openly did that and the court ruled promptly to stop.

Copyright owners such as Granite Broadcasting are already transferring content through the use of streaming and other innovative applications. There is no need whatsoever to change the law, in our opinion, to allow third parties to use our copyrighted material in ways which are now illegal. Copyright owners are already taking full advantage of new media to distribute content in unconventional and creative ways. If our greater public policy goal is to increase a flow of information, then entertainment copyright owners are already doing this, and I assure you that we are aggressive and innovative in this approach.

In the course of our business, ladies and gentlemen, Granite needs assurances that all copyright law and related protections can be provide to us. For example, we need to assure advertisers with whom we contract that they will not find our programming surrounded by somebody else's advertisements and potentially a diminution of the quality of our product by people who did not make that product. So there is no fair use about it in changing it.

Mr. SHIMKUS. Mr. Beck, if you would quickly—

Mr. BECK. I think I am completed. I think all the points that I have not yet made have been made.

Mr. SHIMKUS. I am sure this will be followed up in the question and answer, and my colleagues will be back and I think that we will go into it in greater detail.

[The prepared statement of Stuart J. Beck follows:]

PREPARED STATEMENT OF STUART J. BECK, GRANITE BROADCASTING CORPORATION

Chairman Tauzin, Ranking Member Markey, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss video and broadcasting on the Internet. My name is Stuart Beck, and I am President of Granite Broadcasting Corporation.

Granite, which was founded just twelve years ago, owns and operates nine television stations in geographically diverse markets reaching a substantial number of the nation's television households. Granite is also the largest minority-controlled owner of major market television stations in the country. In every market where we produce news, Granite strives to be the leading provider of local news and community programming. The markets served by Granite include: Detroit, Michigan; Duluth, Minnesota/Superior, Wisconsin; Fort Wayne, Indiana; Fresno, California; Peoria-Bloomington, Illinois; San Francisco, California; San Jose California; Syracuse, New York; and Buffalo, New York.

Each of the broadcast television stations operated by Granite is distinctly community-oriented. The backbone of our service is the strength of our local daily news operations. For many, local television news is the primary source of accurate and up-to-date information about the people, trends, and events in their communities, although the Internet has begun to supplement television programming in this regard, as I will explain. As such, the community-building function of the programming provided by local news operations cannot be overemphasized.

Granite Broadcasting Corporation: Using the Internet to Reach our Audience

My father was a local broadcaster, and I am proud to follow in his footsteps. But times have changed since the day my dad was at the peak of his career, and I might add that they have changed for the better. Technological breakthroughs provide today's broadcasters with expanded opportunities to reach our customers—both in terms of addressing a wider audience and in supplying more comprehensive news and information.

Granite is recognized as an innovator in the development of new media services that combine television broadcasting and Internet platforms. We have established complementary websites for our local stations on which we stream live news coverage from our stations and post items of local interest such as traffic, weather, school closings and high school sports. Local Granite stations consider themselves responsible members of the communities in which they serve, and make it a point

to serve those communities comprehensively. The services Granite provides to local audiences include:

Webcasts: Granite stations stream live news and other original programming over the Internet. Web users also have access to previously aired news programs and other station-generated programs. San Jose-based KNTV streams its original "TechNow!" program live on its site, and it is possible to access archives of the program up to a year old.

Written News Content: Our stations hire reporters to supplement over-the-air and streamed news programming with additional written news, sports, and other stories such as reviews of local entertainment and restaurants for their sites. Our web sites also provide links to related sites with more extensive local entertainment information.

Advertising: Granite news sites typically carry banner ads at the top of the screen and contain many links to the sites of other businesses, bolstering the local economy.

Unique Features: Granite has created an election news site called "Political 2000," to which all of its stations are linked. This link contains national, state and local political news and campaign information tailored to the local Granite station from which the Internet user accessed the "Political 2000" site.

Some Granite stations have online sites especially for children and teens. These include "Kids Club" areas with information of interest to young Internet users, and "Homework Help" areas, which contain links to Internet sites that can assist students in completing research or other projects. KBJR-TV, based in Duluth, Minnesota and Superior, Wisconsin, has created a site featuring local high school hockey information (www.highschoolhockey.com).

Resolving the iCraveTV.com Threat and Letting the Markets Work

The Granite television broadcasting group includes WKBW-TV in Buffalo, New York. WKBW-TV is an ABC affiliate that has been an integrated part of the Buffalo community for many years. The station launched its related web site—www.wkbw.com—in 1996. It receives approximately 300,000 page views every month, and members of the Buffalo community rely on the site for timely news and information about community events.

Last year, Granite learned that another web site—iCraveTV.com—was also carrying WKBW-TV's local programming and other copyrighted works, including all ABC network programming. iCraveTV was converting our television signal into computerized data and streaming it over the Internet from its website. Not only was iCrave carrying WKBW-TV programming without authorization, but the Internet site was displaying our programming on its web page surrounded by iCrave advertisements. Thus, it would be possible for a local Ford car dealer to sign a contract for exclusive rights to WKBW-TV's local 11:00 p.m. newscast only to find its advertisements on iCrave surrounded by competing advertisements by Chevrolet. Similarly, an advertiser may purchase a banner ad for the WKBW web site during the airing of a particular program, only to find it replaced by a competitor's banner advertisement on iCrave's site.

On January 20, 2000, a coalition of television networks, studios and sports leagues filed a Motion in the U.S. District Court for the Western District of Pennsylvania for a Temporary Restraining Order against iCrave. That Motion was granted on January 28, 2000. On February 8, 2000, the court granted a Preliminary Injunction. Under this court order, iCrave is prohibited from infringing on rights set forth in copyright and trademark law or otherwise making any false representation with regard to sponsorship of iCraveTV. iCrave is specifically barred from streaming copyrighted programming into the United States.

It is clear that under U.S. copyright law, it is illegal to take copyrighted programming—such as local news, movies or sports—and stream it on the Internet without permission of the owner. iCrave plainly and openly violated copyright law, and the court was sound in ruling as such. Copyright owners, such as Granite Broadcasting, are already transferring content through the use of streaming and other innovative applications. There is no need to change the law to allow third parties to use copyrighted materials in ways that are now illegal. Copyright owners are already taking advantage of new media to distribute content in unconventional and creative ways. If our greater public policy goal is to increase the flow of information and entertainment, copyright owners are already doing this, and I assure you that we are aggressive and innovative in our approach.

In the course of our business, Granite needs certain assurances that only copyright law and related protections can provide. For example, we need to assure advertisers with whom we contract that they will not find our programming surrounded by advertisements of a competitor. Granite also needs to know that other

web sites will not take our recognized trademark or otherwise imply our endorsement of their site. Finally, Granite needs to know that the programming we create and license for our stations, such as WYBW-TV in Buffalo, will not be misappropriated, jeopardizing the copyright protections and rights of parties with interests at stake. The recent iCrave preliminary injunction provides these types of assurances for Granite and allows us to pursue the business of entertaining, educating and informing our audience.

Previous Congresses have established a solid legal framework to provide copyright and trademark owners control of their works and symbols. Chairman Tauzin, Ranking Member Markey, and Members of the Subcommittee, I urge you to refrain from passing any laws that could jeopardize the intellectual property protections provided under the present legal framework. There is no need to expand the purview of government regulation of the Internet or otherwise change a legal approach that, so far, has proven to work.

Conclusion

Granite is proud to be a leader in the extension of local television service to new media. We are reaching our customers with valuable and comprehensive information and creating a better informed population. Our web sites demonstrate that it is possible to enjoy the free flow of information on the Internet without breaking any laws—laws that have held the United States in good stead for centuries and continue to serve a valuable purpose. I urge the Members of the Subcommittee to continue to encourage the potential of the Internet, but also to step back and let the markets work within the framework of the existing, effective legal system.

Mr. SHIMKUS. I would like to now recognize Mr. Peter Jaszi, professor, Washington College of Law, American University. Again, welcome, and you have 5 minutes.

STATEMENT OF PETER JASZI

Mr. JASZI. Mr. Chairman, members of the subcommittee, I am honored to appear in my individual capacity to offer an overview of how copyright has evolved with technology.

Mr. SHIMKUS. Professor Jaszi, can you pull your microphone just a little bit closer?

Mr. JASZI. With pleasure.

Mr. SHIMKUS. It is a high-tech conference room here.

Mr. JASZI. During the debate over the Digital Millennium Copyright Act of 1998, this subcommittee demonstrated that it understood the need to balance the interests of information consumers and content owners affected by new technology. Then content owners were concerned that advances in digital technology threatened the economic viability of their businesses and legislation proposed by the administration would have substantially curtailed the fair use doctrine.

You recognized that while new technology may present potential threats, it also offers vast new opportunities to the public, and you produced balanced legislation that advanced electronic commerce, and you have heard the radio and television signals now can be distributed via the Internet.

Internet radio already enables consumers to listen to stations from around the world in part because you incorporated the DMCA and a compulsory license for retransmission of copyrighted sound recordings performed by Internet broadcasters. Improvements in quality can soon establish Internet television delivery as the market competitor for other consumer video services.

In my view, the appropriate question to ask now is this: How can Congress facilitate enhanced service and competition? And to begin to answer that question, I would like to take you back to 1455 when Europe got its first glimpse of the Gutenberg Bible and dis-

covered that multiple copies of a document could be produced by mechanical means. Fortunately, early printers' hopes of maintaining a monopoly on this new technology proved unavailing. By 1500, roughly 30,000 titles had made it into print and the world has never been the same.

Copyright began as the law's response to movable type. In the United States, it has served to promote a single Constitutional objective, the progress of science and use for arts. It accomplishes this by balanced regulation of information use and not of the means by which information is delivered to consumers. Copyright has contributed to the dissemination of knowledge and successive waves of new technology from photography to satellite retransmission have swept over our information environment.

In situations where copyright owners have been most concerned that new distributions mechanisms might destabilize an established business model, Congress has prevented technological stalemate by legislating compulsory licenses. In 1909, music copyright owners were locked in a standoff with the fledgling phonograph record industry whose new products threatened sales of sheet music. The Congressional compromise made it clear that unauthorized recordings did infringe copyright while providing a compulsory license to assure that authorizations to record would not be unreasonably withheld.

Section 111 of the 1976 Copyright Act cut the knot our courts had tied around cable television and unleashed a transformative force in the entertainment industry. Section 119 was introduced and extended in 1999 to provide a space for direct broadcast satellite technology. Compulsory licensing often has helped to open other promising channels for delivering content by breaking a decade's old standoff around performance rights and sound recordings.

In short, compulsory licensing is alive and well and the American copyright system is a common and appropriate legislative response to the tensions that new information technologies can generate. When the technological potential of Internet TV is fulfilled, the real question will not be whether it qualifies under the Section 111 and 119 compulsory licenses as now written, but on what terms it should be made available to consumers through existing or new legislation and how content owners can be fairly compensated for delivery of their works.

Given the wildfire growth of Internet radio, Mr. Chairman, there can be no doubt that Internet TV transmissions that include popular network programming would be equally successful. This could be facilitated by statutory provisions like those now available to cable and satellite distributors or, alternatively, local stations could be empowered by law or agreement to grant permission to retransmit network programming with compensation flowing back to the networks.

To the extent that it was appropriate to impose geographical restrictions on Internet retransmission of TV signals, technologies now in existence or in development, password systems and encryption, could be employed. Thus the concerns expressed by the copyright office back in 1997 about extending compulsory licensing to the Internet may no longer be relevant.

More fundamentally, however, Congress should reconsider the role of geographic restrictions as conditions on compulsory licensing for the Internet. If each TV station could make its signals available over the Internet, then all stations could compete freely and attract new viewers and additional advertising. Such a change would advance electronic commerce and information availability if it could be accomplished in way that adequately protects the interests of content owners, broadcasters, and other stakes in this system.

Consumers will increasingly seek to expand the ways they can access video content. The challenge, of course, is to assure that all effective parties benefit from these advancements in technology. Thank you.

[The prepared statement of Peter Jaszi follows:]

PREPARED STATEMENT OF PETER JASZI, PROFESSOR OF LAW, WASHINGTON COLLEGE OF LAW, AMERICAN UNIVERSITY

Mr. Chairman and Members of the Subcommittee, I am honored to appear before you today in my individual capacity as a professor of law who specializes in copyright and new media law. To help put in perspective the testimony of the other distinguished witnesses on the panel, I have been asked to provide an overview of how copyright and related laws have evolved as technology has changed over time.

Introduction. During the debate over the Digital Millennium Copyright Act of 1998, this Subcommittee certainly demonstrated that it understood the need to balance the interests of information consumers and content owners affected by new technology. As you will recall, content owners were deeply concerned that advances in digital technology threatened the economic viability of their businesses. Under legislation proposed by the Administration, the fair use rights of ordinary consumers would have been substantially curtailed in the effort to provide additional protections to content owners. Fortunately, as you recognized, new digital technology may present potential threats to content owners, but it also offers vast new opportunities to information consumers. In the end, you produced balanced legislation that advanced electronic commerce and promoted the interests of both content owners and information consumers.

As you will hear in greater detail today, radio and television signals now can be distributed via the Internet to consumers. Internet radio retransmissions already enable consumers to listen to radio stations from around the world, in part because you incorporated into the DMCA a compulsory license for retransmission of copyrighted sound recordings performed by Internet broadcasters.

Incremental improvements in quality could soon establish Internet television delivery as a market competitor for other consumer video services. In my view, the appropriate question to be asking now is this: What role can and should Congress play to facilitate enhanced service and competition? To answer that question, I think it useful to go back over five centuries and consider how the law has adapted to changes in technology.

The Evolution of Technology and the Law. In 1455, visitors to the Frankfurt Trade Fair got their first glimpse of what we know today as the Gutenberg Bible. The appearance of just a few pages of text was quite a revelation to Western eyes, for it was apparent that multiple copies of a document could be produced by mechanical means. Whatever hopes early printers may have had of maintaining a monopoly on this new method of producing the written word for the masses proved, they were unavailing—fortunately for all of us. By 1500, roughly 30,000 titles had made it into print. The world has never been the same.

As Representative Sawyer so eloquently put it during the hearing this Subcommittee held during its consideration of the DMCA, “Gutenberg’s action had a powerful effect on western culture. It was the bridge from the Renaissance to the Reformation and was a direct pathway in this country to the First Amendment.”

Copyright had its beginnings as the law’s response to the spread of the new technology of movable type. Reflecting the broad societal interest in the wide dissemination of information, Article 1, section 8, clause 8 of the Constitution authorizes Congress to promulgate laws governing the scope of proprietary rights in, and use privileges with respect to, intangible “works of authorship.” As set forth in the Constitution, the fundamental goal is “[t]o promote the Progress of Science and useful Arts...” In the more than 200 years since enactment of the first federal copyright law in 1790, the maintenance of this balance in our copyright laws has contributed

significantly to the growth of markets for works of the imagination and of the industries that enable the public to have access to and enjoy such works.

Congress has historically advanced this constitutional objective and promoted technological development by regulating the use of information—not the devices or means by which the information is delivered or used by information consumers. Section 106 of the Copyright Act of 1976, for example, establishes certain rights copyright owners have in their works, including limitations on the use of these works without their authorization. As a countervailing balance, Sections 107 through 121 of the Copyright Act set forth the circumstances in which such uses will be deemed permissible or otherwise lawful even though unauthorized. In general, these provisions are technology neutral. They do not regulate information commerce or information technology. Instead, they prohibit certain actions and create exceptions to permit certain conduct deemed to be in the greater public interest, all in a way that appropriately balances the interests of copyright owners and users of copyrighted works.

Evolution of Compulsory Licenses. In general, the copyright system of the United States has an excellent—if by no means perfect—record of accommodating technological change and adapting itself to the conditions created by new modes of information commerce. This is so, at least in part, because the fundamental values underlying that system, with their emphasis on the importance of achieving an appropriate balance between proprietary control and public access, have stood so robustly through all the waves of “new technology” which have swept over our information environment in the last century: photography, motion pictures, broadcasting, photocopying, cable and satellite retransmission—and more. In this connection, it is worth remembering that some of those waves appeared—in their own times—as threatening to the copyright status quo as networked digital technology seems today.

From time to time, of course, the process of accommodation and adaptation has been less than perfectly smooth—especially in situations where copyright owners have been intensely concerned about the potential of new distribution technologies to destabilize established business models. In these situations, to avoid stalemates that might retard the growth of information commerce, the Congress repeatedly has responded by legislating “compulsory” or “statutory” licenses. These mechanisms allow (either in the first instance or as a “back-up” where attempts at voluntary negotiation have failed) the dissemination of copyrighted works by means of specific technologies, when—and only when—prescribed conditions (including the payment of licensing fees) have been satisfied. Far from being out of the ordinary, compulsory licensing is embedded in the grain of the American copyright system.

In 1909, for example, the Congress was faced with a stand-off between owners of copyright in musical compositions, on the one hand, and the fledgling phonograph record industry—whose new business model threatened continued sales of sheet music—on the other. The compromise Congress struck involved making it clear that the unauthorized “mechanical reproduction” of songs did indeed infringe copyright, while providing a compulsory license (now found in Section 115 of the Copyright Act) to assure that authorization for recordings would not be unreasonably withheld.

The 1976 Copyright Act incorporated other compulsory licenses: Section 116 (repealed in 1993) was designed to strike a fair compromise between the interests of music copyright owners and jukebox operators, while Section 118 aimed specifically to promote the performance of copyrighted music by means of the then-novel technology of public broadcasting. Of greatest significance, however, were the Section 111 compulsory licensing provisions that cut the Gordian Knot of law and technology that courts had tied over the previous decade, enabling the rise of cable television and thus unleashing a transformative force in the entertainment and information industries.

Since 1976, the Congress frequently has resorted to compulsory licensing to avoid other potential impasses between content owners and distributors. Section 119 of the Copyright Act was introduced in the Satellite Home Viewer Act of 1988 to provide a space in which direct broadcast satellite technology could flourish as cable TV had done before it. In 1999, the provision was revised and extended by (among other things) the addition of a new compulsory license for “local-into-local” transmissions. Recently, compulsory licensing also was employed to open up yet other promising channels for delivering copyrighted content to consumers by breaking the decades-old standoff between recording companies and broadcasters around performance rights in sound recordings. Central to the design of the Digital Performance Right in Sound Recordings Act (DSPRA) of 1995 were a back-up compulsory license for certain subscription music services and another for the so-called “digital delivery” of sound recordings. In 1998, as part of the Digital Millennium Copyright Act, the DSPRA was expanded to add a the new compulsory license for the retrans-

mission of copyrighted sound recordings by Internet broadcasters to which I referred earlier.

In short, compulsory licensing is alive and well in the American copyright system. It is a common and appropriate legislative response to the tensions that new technological modes of information commerce inevitably will generate.

Last year, we saw a further evolution of the debate over the future of compulsory licensing. In 1997, in anticipation of the renewal of the Satellite Home Viewer Act, the Copyright Office conducted a study to determine whether and how that Act should be extended. The Copyright Office concluded that compulsory licenses should not be extended to the Internet, largely because of the perceived inability of Internet technology to geographically restrict signals to areas unserved by terrestrial broadcast signals.

In 1999, potentially harmful language was included in the Conference Report of the Satellite Home Viewer Improvements Act that explicitly would have precluded Internet carriage of retransmitted video signals. As I understand it, proponents of the change contended that this merely reflected existing law, since Internet companies did not currently qualify for such a license. Internet and telecommunications companies objected, arguing that, if they could meet the geographic restrictions in the current Act, they should be entitled to a compulsory license. In the end, principally as a result of the efforts of many Members of this Committee, the language was removed from the legislation that ultimately was signed into law.

Next Steps. In the near future, Internet companies believe they will be able to provide effective competition to cable and satellite companies delivering television to consumers. Natural markets include the workplace, where interference prevents clear reception, and rural and remote areas unserved or undeserved by broadcast, cable, and satellite services. When this technological potential is fulfilled, the real question will not be whether Internet TV service qualifies under the Section 111 and 119 compulsory license, as now written, but on what terms it should be made available to consumers under existing or new legislation—and how content owners can be fairly and adequately compensated for delivery of their works.

As other witnesses have stated, the tens of thousands of hours of audiovisual content available over the Internet demonstrates a growing consumer interest in Internet video. There are sites dedicated to independent films, independently produced news, talk and public service programming, and original animation. Live concerts, news events, conferences, and business meetings from around the world are broadcast five daily. Television programming from past decades have been licensed for rebroadcast on various Internet sites.

But despite the wealth of video content available over the Internet—far more than any one cable or satellite system could possibly offer—what is missing is current television network content. Several hundred local television stations are retransmitted over the Internet today, but these retransmissions are limited to content created by the stations themselves. When such material is on the air, it is made available to all Internet users in all geographic regions, without subscription. At other times of the day, such as when network programming is broadcast, the station signals are not available over the Internet.

Given the wildfire growth of Internet radio, Mr. Chairman, there can be no doubt that television transmissions over the Internet that include today's popular network programming would be equally successful. To enable transmission of the complete broadcast day would require a license from the owner of the network content. This could be facilitated by statutory provisions of the type now available to cable and satellite distributors. Alternatively, the Copyright Office study suggested that local stations could be empowered, by law or agreement, to grant permission to retransmit network programming, with compensation flowing back to the networks.

As I noted earlier, in its study the Copyright Office concluded that compulsory licenses should not be extended to the Internet, largely because of the perceived inability of Internet technology to geographically restrict signals to areas unserved by terrestrial broadcast signals. That may have been true in 1997, but it will increasingly be of limited relevance in the future. While the Internet has generally been utilized as a global medium, various means have been developed in recent years to restrict access to material over the Internet. Private web sites are available on a member-only basis. Videoconferences restricted to certain participants have been conducted over the Internet. Methods such as password protection or cryptographic authentication can be used to limit access to authorized persons. Other technologies, such as hardware cards or smart cards, theoretically could be implemented for this purpose.

As I also have noted, even under current law Internet services argue that they could be included within the compulsory video licenses for cable or satellite services to retransmit station signals if they limit distribution of signals to particular geo-

graphic regions. In my view, however, Congress should reconsider the requirement to implement geographic restrictions as a condition to compulsory licensing for the Internet. If every television station can make its signals available over the Internet, without spectrum or bandwidth limitations faced by cable and satellite systems, then all local stations can compete freely and attract new viewers (and, therefore, more advertising revenue). Such a change would advance electronic commerce and the availability of information to consumers, and can undoubtedly be accomplished by means that will adequately and fairly protect the interest of content owners, broadcasters, and others with a vested interest in the status quo.

Conclusion. Consumers will increasingly seek to expand the ways they can access video content. Whether viewing broadcast programming on a computer monitor, a handheld personal device, or a television screen using relatively new market entrants such as Web TV, AOL TV, RealNetworks G2, or a host of products still being developed in garages and labs around the world, consumers will seek access to new content and to share their experiences with others. As the technology further evolves, the breadth of their experiences and enjoyment can increase as well. The challenge, of course, is to ensure that both content owners and consumers benefit from these advances in technology.

As it did in rewriting the DMCA, this Subcommittee can advance technological development and electronic commerce by balancing the interests of these important stakeholder groups.

Thank you.

Mr. TAUZIN. Thank you, gentleman.

The Chair now recognizes Mr. Paul Karpowicz, the Vice President of LIN Television of Providence, Rhode Island.

STATEMENT OF PAUL KARPOWICZ

MR. KARPOWICZ. Thank you, Mr. Chairman. I am vice president of LIN Television which owns and operates 15 TV stations nationwide. I am also vice chairman of the NAB Television Board and chairman of the CBS Affiliates Board.

Lintel vision employs 1,500 people including nearly 140 at our station in Buffalo, New York, WIVB, Channel 4. Of those 140 employees, 60 are part of our local news department. WIVB is our station in Buffalo that was one of those stations hijacked by iCraveTV and put on the Internet illegally.

I am here today to tell this committee that we must oppose and remain vigilant against this sort of thievery. The activity iCraveTV engaged in was a direct attack on American copyright law. More importantly, it was a frontal assault upon the locally based network affiliate system of broadcasting that is the hallmark of American television. Both Congress and the FCC have consistently recognized the benefits of having American broadcasting licensed and entrusted to serve the local public interest.

As a result, we have created a nationwide network of local stations that provides both national and local programming. iCraveTV's actions do violence to that system and ultimately threaten the ability of all Americans to have access to local programming. Let me explain how. My station in Buffalo, WIVB, is a ABC affiliate and carries their network fare. In addition to that network programming, we offer local produced programming, syndicated shows that we purchase as the exclusive station in our market. Providing all of these programs allows us to generate local advertising that runs under all of the local service we provide.

For example, we spend almost \$5 million a year on local news, a commitment that would not be possible without some of the revenue that we generate from our advertising within local network and syndicated programs. As you know, Congress has created com-

pulsory license for both cable and satellite services that gives those industries the ability to retransmit local stations in a discrete geographic area, in this case, our DMA with some very limited exceptions.

These licenses also carry certain obligations such as must-carry, Syntax, and sports blackout rules, but no such license or obligations exist for the Internet which can literally serve the entire world.

Why is this a concern? If you look at my station, it provides all kinds of local programming throughout the day including local advertising, promotional material that drives viewers to our local news, weather warnings and alerts, public service announcements, and numerous other offerings. If a viewer in Buffalo can access their network programming from the Internet, they will lose access to all of that local information, and it will only diminish our ability to provide it.

The same holds true for syndicated programs. We pay hefty fees to obtain the rights to show Oprah in the Buffalo market, but if some Internet site streams Oprah from elsewhere or vice versa, that destroys the syndicated exclusivity we have paid for and our station and its viewers will suffer as a result.

The bottom line is that this lawless activity will create economic harm which necessarily translates into reduced local services for our audience. Further, the way in which the programs are presented on iCraveTV degrades the entire viewing experience by squeezing my station's picture inside a frame that includes extraneous banner advertising. Not only does the picture quality suffer, but by doing this, iCraveTV also removes the data stream that gives viewer closed captioning and lets them activate the V-chip technology in their TV set.

In addition, iCraveTV or some other network provider could insert advertising for competing advertisers that would severely dilute the ads my station carries. There is no reason for General Motors to advertise on my station if iCraveTV is running a banner ad for Ford around the edge of my picture.

Local advertisers pay for local viewers. Viewers in Buffalo watching programming from some other market will not see the local car ads, the local PSAs, or those ever important local political ads, and that same situation would hold true for viewers in other markets watching WIVB from Buffalo.

The Federal Court in Pittsburgh fortunately stepped in and did the right thing. It forced iCraveTV to cease and desist in this illegal activity. We believe that the laws currently on the books are sufficient to make sure that this does not happen again, so long as the courts remain vigilant in enforcement.

The situation can only change if Congress were to become convinced to pass legislation by granting the compulsory license for the Internet. The Internet is and can be a wonderful thing. Our stations are already using it to provide news, Doppler radar, traffic cameras, and other local information to our viewers.

Make no mistake, we are not against the Internet, but what we are against is allowing the Internet to take advantage of our copyright material and use it illegally to hurt us and our local viewers. We all want the Internet to enhance our local markets through in-

novative technology, but we cannot allow those without the copy-right to control those uses.

We will continue to fight for our rights against iCraveTV or any other web site that attempts to steal our product, and I would urge of you to join us in that effort. Thank you very much.

[The prepared statement of Paul Karpowicz follows:]

PREPARED STATEMENT OF PAUL KARPOWICZ, VICE PRESIDENT, LIN TELEVISION CORPORATION ON BEHALF OF THE NATIONAL ASSOCIATION OF BROADCASTERS

My name is Paul Karpowicz. I am the Vice President for Television of LIN Television Corporation, the owner of television station WIVB, a CBS-affiliated station in Buffalo, New York as well as network stations in many other markets. I am the Vice Chairman of the Television Board of the National Association of Broadcasters and the Chairman of the CBS Television Affiliates Association. Thank you very much for giving me the opportunity to testify today.

The Network/Affiliate System

Our station in Buffalo, like the hundreds of other network stations across the United States, exists as a result of the uniquely American partnership between national networks and local TV stations. Under this system, local TV stations in markets large and small across the United States provide a unique combination of national TV programming (such as NFL football and "60 Minutes"), syndicated programming (such as "Oprah Winfrey"), and local news, weather, and public affairs programming.

The network/affiliate system provides the solution to a problem that Congress has long tried to solve: how to ensure that as many communities as possible have their own local TV "voices," rather than accepting a world in which viewers in Buffalo, Baton Rouge, or Boise must rely solely on programming originating in New York or Los Angeles. The network/affiliate system has also ensured that virtually all Americans have access to *free*, over-the-air television, rather than forcing viewers to pay intermediaries (such as cable systems or satellite companies) to provide them with TV programming.

In short, the network/affiliate system has been a tremendous American success story. But the continued vitality of this system depends on local stations enjoying a substantial degree of exclusivity in providing network programming to local viewers. Local stations make much of their revenues by selling advertising time during popular network programs, particularly primetime programs. During these same programs, local stations run promotional spots designed to attract viewers to local news programs; these spots are a key way that stations build audiences for their news programs. If local viewers are able to watch network programs on distant stations imported by third parties—whether cable systems, satellite carriers, or Internet companies—the basic economics of network affiliates are put in grave jeopardy.

Exclusivity in providing local audiences with syndicated programming is also important to the continued viability of local stations, both network and independent. Our stations simply cannot continue to pay large fees to program syndicators to keep high quality syndicated shows on free over-the-air television, if the same programs are being imported day and night into our local markets by cable, satellite, or the Internet.

Protection of stations from importation of duplicative programming into their markets is thoroughly woven into the fabric of our legal system. Since the 1960s, for example, the Federal Communications Commission has adopted and enforced network nonduplication, syndicated exclusivity, and sports blackout rules that bar cable systems from importing duplicative programming from distant stations. Congress acknowledged and supported these rules when it created the cable compulsory license in 1976, and reaffirmed its strong support of those rules in the Telecommunications Act of 1996.

When satellite television appeared on the scene, Congress created a similar set of rules in 1988 to protect the network/affiliate relationship. Congress reaffirmed those rules last year in the Satellite Home Viewer Improvement Act, and directed the Commission to apply syndicated exclusivity and sports blackout rules to satellite carriers as well. In doing so, Congress "reassert[ed] the importance of protecting and fostering the system of television networks as they relate to the concept of localism," and pointed out that "television broadcast stations provide valuable programming tailored to local needs, such as news, weather, special announcements and information related to local activities." SHVIA Conference Report, 145 Cong. Rec. at 11792 (daily ed. Nov. 9, 1999).

Internet Transmissions of TV Broadcasts and the iCraveTV Case

Although this Subcommittee is very familiar with the harm (and resulting consumer complaints) caused by satellite industry importation of distant network stations, the threat posed by unauthorized Internet delivery of broadcast television programming is vastly worse.

Let me start by telling you what iCraveTV is and what it has done. iCraveTV is a company based in Toronto, Ontario that late last year began picking up over-the-air TV signals from 17 stations in Buffalo, New York and Toronto and retransmitting them throughout the world via the Internet. iCraveTV's business plan was simple: use broadcasters' copyrighted product, in which broadcasters have invested billions of dollars, and then "frame" it with iCraveTV's own advertisements. In the process, iCraveTV also degraded the quality of our signal, omitted the part of the signal required for closed captioning and parental advisories, and made it appear that iCraveTV was itself the author of the programming. iCraveTV did not obtain permission from any TV station—including our Buffalo station—or any other copyright owner before pirating their programming.

iCraveTV pretended that its service was limited to Canada, where it claims it is permitted to retransmit TV programming through the Internet. (We strongly disagree with that claim about Canadian law, and iCraveTV has been sued in Canada as well.) The reality is that iCraveTV was available throughout the United States and throughout the world.

As soon as they learned of iCraveTV's unlawful activities, American broadcasters and copyright owners immediately demanded that iCraveTV stop infringing their copyrights. When iCraveTV refused, a coalition of TV networks, motion picture studios, and sports leagues filed suit in federal court in Pittsburgh on January 20, 2000 against iCraveTV and its principals.

Judge Ziegler of the United States District Court for the Western District of Pennsylvania instantly saw through the "only in Canada" sham. As Judge Ziegler explained, the evidence showed that the iCraveTV web site "was established, used, promoted, advertised and sold to attract users in the United States to circumvent the trade[mark] and copyright laws of the United States and to circumvent the trade[mark] and copyright rights of the plaintiffs."

The Court also found that by transmitting TV programming through the Internet into the United States, iCraveTV is "publicly performing" those programs in violation of the plaintiffs' exclusive rights under the Copyright Act. Notably, iCraveTV did not argue—and could not argue—that it is allowed to transmit TV programming through the Internet to U.S. viewers without obtaining permission from the copyright owners. As the Register of Copyrights made clear in letters to Congress last fall, U.S. law simply does not permit such transmissions, and Internet companies are not entitled to transmit TV programming under any existing compulsory license.

Judge Ziegler has issued a preliminary injunction barring iCraveTV from transmitting the plaintiffs' copyrighted programming into the United States. To comply with that court order, iCraveTV has terminated its online transmissions of TV programming.

Why Internet Retransmissions of TV Station Programming is So Dangerous

The very substantial harm that stations have experienced as a result of unlawful retransmissions by satellite companies would be incalculably worse if Internet infringers such as iCraveTV were allowed to continue to stay in business, or if Congress were (mistakenly) to create a new Internet compulsory license that would override the rights of stations and other copyright owners. The reason is simple: unauthorized Internet transmissions of TV broadcast programming can reach everyone in the United States—in fact, everyone in the world—who has a computer and a modem. In the United States alone, there are 110 million Americans with Internet access, and there are hundreds of millions of Internet users worldwide. These figures are, of course, growing every day, as is access to broadband that makes delivery of video over the Internet even more appealing to consumers. As local stations have lost millions of local viewers to unlawful retransmission of distant TV stations by satellite companies, they would now face unauthorized Internet companies delivering the station's own product to more than 100 million local viewers in the United States, including those in many of the most affluent households that are the most appealing to advertisers.

And it is not just the national programming that is at issue here. Our Buffalo station invests millions of dollars every year in producing top quality local news programming, of which we are the sole copyright owner. Having invested the money and hired the talent to produce this programming, our station—and not some third party who has invested not a penny in our programming—is entitled to decide how to deliver that programming to viewers.

Our Buffalo station, like many stations, also buys syndicated programming, and often pays top dollar to ensure that only our station will offer a particular program in its local market. FCC rules ensure that those contracts must be respected by cable systems when they import out-of-town stations. Unauthorized Internet transmissions would, of course, make those contractual protections meaningless, since TV stations carrying the same programming in distant cities would be available to every viewer in Buffalo with an Internet connection.

Nor is this just a domestic issue. By delivering U.S. television programming throughout the world on the Internet, unauthorized Web transmissions of TV stations would sabotage the ability of U.S. broadcasters and other copyright owners to sell their programming in foreign markets. That is, owners of valuable U.S. television programming would find themselves “scooped” in selling their own programming by third parties who could simply appropriate the entire output of the U.S. television programming and deliver it instantaneously throughout the world.

It is not an exaggeration to say that unauthorized Internet transmissions of TV stations would cripple, if not destroy, our spectacularly successful system of free, local, over-the-air television. Exclusivity would become a meaningless concept, since dozens, if not hundreds, of stations would offer the same programming that local stations once used as their calling card. Local weather emergency information—such as blizzard warnings in Buffalo—would go unheard by many local viewers, since there would be no reason to watch network or syndicated programming on a viewer’s local station rather than on a station imported from some distant market. And with those viewers lost to local stations, the revenues needed for stations for local stations to provide this programming would be diminished. And local political advertisements, along with local news coverage, would go unseen by many local viewers for the same reasons.

Let me be clear: broadcasters are not opposed to technological change, and we are eager to harness the extraordinary power of the Internet in ways that are consistent with our roles as providers of free, over-the-air local television. To exploit the magic of the Internet properly, however, requires that *free market* forces be left to work, rather than having the government seize our copyrighted works and hand them over to third parties who have done nothing to create them.

Broadcasters are already taking advantage of the power of the Internet—and benefiting consumers—through purely voluntary, marketplace transactions. For example, many TV stations today offer their own local newscasts throughout the United States on their Web sites, thereby enabling interested viewers—including former residents—to keep on top of local news developments. Of course, these Webcasts feature (and are financed in part by) advertisements sold by the station that created the programming, not ads placed by third party parasites. Other broadcast TV programs may soon be offered through the Internet, through normal, marketplace transactions, if copyright owners determine that it can be done consistent with the fundamental principles of their businesses.

Although *authorized* Webcasts of TV broadcast programming are an exciting new development, *unauthorized* Webcasts pose one of the most devastating threats that over-the-air television has ever faced. We should take to heart the lesson that the satellite experience has taught us: as Chairman Tauzin has pointed out, it is crucial to stop unauthorized transmissions of TV programming before they become widespread and viewers become accustomed to receiving illegal programming. Just as Congress does not want to hear complaints from viewers about another round of turnoffs—this time from an illegal Internet service—stations do not want to field the complaints that will inevitably result if this type of piracy becomes widespread and is then halted by the courts.

For now, the laws appear to be working well to permit TV broadcasters and other copyright owners to protect themselves against this new, ultra-high-tech form of piracy: the *iCraveTV* court correctly found that Internet transmissions of TV programming in the United States, without the permission of the broadcaster and copyright owners, are against the law. We will keep you closely advised of developments, and will let you and other concerned members of Congress know immediately if it turns out that there needs to be some adjustment to U.S. law to prevent *iCraveTV* or anyone else from engaging in this outrageous form of misappropriation.

Mr. TAUZIN. Thank you very much, sir.

And our final witness is Mr. Alex Alben, Vice President of Government Affairs of RealNetworks, referred to you earlier I think by Mr. McCallum as a distributor of *iCrave*. Mr. Alben.

STATEMENT OF ALEX ALBEN

Mr. ALBEN. We are not a distributor. We are the technology platform that is utilized for streaming.

Mr. TAUZIN. I stand corrected.

Mr. ALBEN. Mr. Chairman, members of the subcommittee, on behalf of RealNetworks, thank you for inviting me to testify today.

I'm Alex Alben, and since 1997, I've had the pleasure of developing and implementing RealNetworks' Internet media strategy. It has also been my pleasure to represent RealNetworks as one of the founding members of the Digital Media Association which today represents over 40 Internet media companies.

Mr. Valenti, we do not have as distinguished a list of members in terms of name recognition, but our members are also technology exporters and are building the infrastructure for the worldwide internet economy which hopefully will also be a great export for the United States as we continue to develop.

RealNetworks was founded by Rob Glazer in 1994 with the bold premise that the Internet would be a mass audio-visual medium. To accomplish this, Mr. Grazer and his development team developed the Real Player, a software application that receives plays packets of audio and video, and then delivers or streams them over the Internet. Because we have always made a free version of the Real Player available to end users, our platform has rapidly proliferated, as you are aware.

From 5 million unique registered users in 1995, our audience has grown to over 95 million today with 33 percent watching video and 75 percent tuning into audio programming every week. This growth would not have been possible without the creation of attractive content from over 300 content partners from individuals to schools and community groups to large media companies.

The barriers to entry in the field of mass communications have never been so low as on the Internet. Streaming media, as you've heard today, is being widely embraced by local radio and television stations. As a result of these forces, over 300,000 hours of programming are created and webcast each week, creating a medium that enriches video content with interactive features.

Mr. Chairman, we appreciate the opportunity to come here today, and I would like to alert you to three critical trends in our business. First, we firmly believe that the a level playing field fosters competition and is essential for growth of the Internet. The Telecommunications Act of 1996 called for breaking down the barriers of distribution in the United States communications marketplace. The Internet is accelerating this process in ways that we could not have predicted even 4 years ago. A horde of businesses across all industry sectors are pushing the barriers for wider distribution of content over the Internet.

Our sole concern is that we have a level playing field to compete with these established forms of mass media. We are not asking for Government regulation. We are not asking for Government intervention. We believe none is required at this time when the marketplace is finding new ways to meet consumer appetite for interactive online news and entertainment products.

Second, the web must be allowed to bring local programming to a global audience. Much like cable access and low-powered TV,

streaming media promotes localism and presents a platform for more speakers to reach the general public, creating new media outlets to serve the public. Any solution to an Internet compulsory license must take the global nature of the Internet into account and not artificially limit the audience for webcast content by imposing artificial geographic restrictions that make little sense for a global medium.

Our challenge, therefore, is to present new business models for media companies to stream their programming to this new audience so that they can immediately appreciate the upside of full-fledged distribution of their programming over the Internet.

Third, streaming media will establish new online revenue streams for traditional media. As you have heard today, it already is, but we must also respect intellectual property rights. The web has already created these new revenue streams for Internet broadcasters and other broadcasters who can sell Internet ads and do E-commerce on a global basis. It is a wonderful thing to hear of stations from Buffalo, New York distributing their programming over the world and selling ads now on an international basis. It's remarkable.

Traditional sports entertainment, and news programs made available to the 250 million member Internet audience will only grow the revenues for the talented artists, athletes including colleagues, producers, and others who create this popular programming. We want to offer content to consumers at attractive prices with the greatest convenience in terms of what they can watch and where they want to watch it. By offering the online audience the widest possible array of live and on-demand programming, we will work with content providers to create this huge new market for new and old copyrighted works.

In the long run, every program will be globally distributed over the Internet. The technology allows for it and consumers demand it. Our critical task to do so in a way that fairly compensates copyright owners and demonstrates the promise of this rich and interactive global medium.

Mr. Chairman, thank you for inviting us here today. I'd like to also add to Mr. Valenti's comments. We are interested in the copyright assembly, and if we can afford the membership fees, we may be interested in signing up. So please give us some information.

Mr. VALENTI. We will give you a compulsory license.

Mr. TAUZIN. Compulsory dues.

Thank you very much, Mr. Alben.

[The prepared statement of Alex Alben follows:]

PREPARED STATEMENT OF ALEX ALBEN, VICE PRESIDENT, GOVERNMENT AFFAIRS,
REALNETWORKS, INC.

Mr. Chairman and members of the subcommittee, on behalf of RealNetworks, Inc., thank you for inviting me to testify today at this very important hearing regarding the future of video distribution on the Internet. I am Alex Alben, and since 1997, I have had the remarkable pleasure of participating in the development and implementation of RealNetworks' groundbreaking Internet media strategy. It has also been my pleasure to represent RealNetworks as one of the founding members of the Digital Media Association, which today represents forty digital music, e-commerce and digital video companies. Today I would like to briefly review the history of RealNetworks and streaming media, and discuss the future of our company, the dig-

ital media industry, and the exciting future that consumers will enjoy as we implement our vision to distribute music and video to the global Internet audience.

RealNetworks Revolutionary Technology Creates The Streaming Media Market

RealNetworks was founded by Rob Glaser in 1994 with the bold premise that the Internet would one day be a mass audiovisual medium. For those of us who built early web businesses on a foundation of text and simple graphics, the notion that one day high quality video would stream to 250 million connected consumers around the world was as farfetched as predicting that two sluggers would break Babe Ruth's single season home run record two years in a row. Yet just as Mark McGwire and Sammy Sosa have accomplished this feat, RealNetworks technology has delivered on the promise of inter-active video. You might remember the first Seattle Mariner's baseball game, broadcast over the Internet in April of 1995 using the RealAudio 1.0 format. This AM-quality broadcast was not only streamed to fans at their desktops in Seattle, but, complete with commercials, was enjoyed by displaced fans as far away as Stockholm and Tokyo.

To accomplish this, Mr. Glaser and his team had developed the Real Player—a software application that receives and plays “packets” of audio or video data that are delivered from remote computers, or “servers,” across the Internet. By breaking rich media files such as video into a series of small packets, Real technology gives the computer user a continuous listening or viewing experience, even over low bit rate connections. The RealPlayer and server system facilitates both live and on-demand delivery of streaming programming. Unlike digital downloads, which require storage space on the user's pc and relatively fast Internet connections, streaming represents an incredibly efficient and inexpensive way for broadcasters—or “webcasters”—to deliver audiovisual content to their online audience. As a consequence, the technology fulfills Mr. Glaser's original vision that millions of Internet users can create new content for a new medium, without reliance on traditional media outlets.

Fast forward to February of 1997, when Spike Lee helped us launch RealVideo with a short film featuring tap dancer Savion Glover that was widely distributed over the Internet. It's unfortunate that Al Jolson wasn't available, because he might have said, “You ain't seen nothing yet.”

In November of 1999, the RealPlayer 7.0 brought consumers a package of audio and video programming that delivers on the promise of streaming media, incorporating better video and audio quality with a revolutionary format that allows for simultaneous presentations of multimedia, text, pictures and graphics.

Because we have always made a free version of the RealPlayer available to end users, the platform has rapidly proliferated. From 500,000 unique registered users in 1995, our audience grew to 14.4 million in 1997, 48 million in 1998 and stands at 95 million at the beginning of this month, with five downloads of the RealPlayer 7 occurring every second.

To underscore the popularity of streaming media on the web, Arbitron New Media and Northstar Interactive report that of the 95 million RealPlayer base, 33% watch video programming and 75% tune into audio programming on a weekly basis!

Connecting 95 Million RealPlayer Users To a Wide Array of Content Created Both By Traditional Media Companies and New Voices.

This growth would not have been possible without the creation of attractive content from wide variety of sources, enabled by the distribution of our low-cost encoding and production tools. We also offer a free server that will connect a content publisher with up to sixty simultaneous viewers or listeners. From individuals, to community groups, to clubs, to broadcasters and large media companies, the barriers to entry in the field of mass communications have never been so low as on the Internet. Virtually anyone with a connected computer can distribute information over the World Wide Web, realizing our Founding Fathers' vision of a robust marketplace of ideas.

RealNetworks has over 300 content partners, ranging from Chuck D's RapStation, to NPR, the BBC, Comedy Central, Atom Films and Leonard Nimoy's “Alien Voices.” Independent and non-traditional programmers have found an efficient channel in the Internet to cost-effectively reach niche audiences. Similarly, CNN, ESPN, NBC, MTV, Fox, CBS and other major media companies have embraced RealSystem G2 as a leveraged way to expand their reach on the web and drive consumers to both their web sites and to their off-line media outlets.

And this is an international phenomenon—from broadcasts of special services from the Vatican to underground radio transmissions during the war in Bosnia—streaming media has presented unique ways for speakers and dissidents to reach their community of listeners on the World Wide Web.

Streaming media has also been widely embraced by local radio and television stations. Our best estimates are that on a global basis over 3000 radio stations have put their signal up on the web on a 24 hour basis. This phenomenon has turned businesses aimed at local audiences (and advertisers) into global media outlets. Following suit, over 200 TV affiliates offer some selection of their news programming on the Internet in RealVideo, creating convenience for viewers who seek out particular stories or who might have missed the 5 o'clock News.

As a result of these forces, over 300,000 hours of programming are created and webcast each week in RealMedia formats.

Motion picture studios, TV networks, and local broadcasters have all affirmatively decided to employ streaming media to expand beyond their core consumers and reach the vital Internet audience. The promotional value of distributing content over the web and the potential for tapping into increased ad revenues perpetuates this "virtuous circle." RealNetworks views these copyright owners and programmers as our partners in this enterprise to create a new programming medium—a medium that takes the best of TV and Radio content and enriches it with interactive features that "add value" for the American and global consumer.

Looking to the Future—

Mr. Chairman, we appreciate the opportunity to come before this Subcommittee and reflect not only on the rapid growth of our industry, but to alert you to trends we have noticed, with a view toward helping you craft the best approach to government policy in this area. We can encapsulate these observations in a set of three fundamental principles:

First—A Level Playing Field Fosters Competition And Is Essential For the Growth Of This Important New Medium

The Telecommunications Act of 1996 called for breaking down the barriers to distribution in the U.S. communications marketplace. The Internet has accelerated this process in ways we could not have predicted even four years ago. A horde of businesses—software vendors, media companies, telcos and others—are pushing the barriers for wider distribution of content to more consumers. RealNetworks and other Internet media delivery companies have not asked for special legislation to address the particular aspects of our distribution channel. In fact, as the statistics I have cited clearly demonstrate, the web audience is growing without any regulatory favoritism.

Our sole concern is to have a level playing field to compete with established forms of mass media. We are not asking for government regulation or intervention and believe none is required at this time when the marketplace is finding new ways to meet consumer appetite for interactive online news and entertainment products. It would also be unfair—and probably unwise—for government to devise new sets of rules to regulate this nascent medium as it evolves and grows in sometimes unpredictable ways. We are simply asking that all laws passed be technologically neutral and that Congress refrain from erecting special barriers to digital distribution simply because it is digital, without thinking through the implications for the important policy goals served by online media.

Second—The Web Must Be Allowed To Bring Local Programming To A Global Audience

The impressive growth of streaming on the Internet demonstrates consumer demand for online audio and visual content. People today expect to find radio shows and film clips on web sites. They want to experience both traditional and non-traditional content and they want to do so on their own schedule and in places that are not well-served by analog audio and video signals. By its nature, the Internet is an unscheduled interactive medium that offers consumers more choice and more voices. Clearly, this medium dovetails with our longheld public policy principles of free speech and breaking content distribution bottlenecks.

Much like Cable Access, Low Power TV and the old-fashioned soapbox, streaming media promotes localism and presents a platform for more speakers to reach the general public. I'm sure the members of this Committee are keenly aware that much of the unprecedented media consolidation and relaxation of cross-ownership rules over the past decade are premised on this development—that new media outlets are serving the public through new means of distribution such as the Internet.

The challenge in creating a compulsory license for the Internet is not to shoehorn the Internet into local topographies, but to fairly compensate program owners for the distribution of their content beyond the boundaries of their terrestrial signals. The technology allows a soccer fan in the U.S. to watch a World Cup match in France in real time over a modem. Surely, along with the sports leagues, we should be smart enough to figure out how to expand the audience for such programming

in a way that doesn't undermine traditional revenue streams and licensing arrangements.

Any solution to an Internet compulsory license must take the global nature of the Internet into account and not artificially limit the audience for webcast content by imposing artificial geographic restrictions that make little sense for a global medium. Our challenge, therefore, is to present new business models for media companies and producers to stream their programming to this new audience, so that they can immediately appreciate the upside of full-fledged distribution of their programming over the Internet.

Third—Streaming Media Will Establish New Online Revenue Streams for Traditional Media, While Respecting Intellectual Property Rights

As a person who participated on the studio side of the Sony Betamax case, I can only smile now at the outcome where the VCR created both the \$7 billion Video Rental market and the \$8 billion Video Sale market, while the Theatrical Box Office continues to grow and in fact set new records. Quite simply, new technologies created new markets for old content in a way that did not cannibalize long-established revenue streams. The web is already creating new revenue streams for local broadcasters who can now sell Internet ads and do e-commerce on a global basis, while their terrestrial signal market continues to thrive. Traditional sports, entertainment and news programs made available to the 250 million member Internet audience will only grow revenues for the talented artists, athletes, producers and others who create this popular programming.

We are mindful that we need to balance the incentives to create great programming with the benefits of achieving the widest possible distribution. RealNetworks upholds this principle, both as an inventor of intellectual property and as the first company to successfully bring a legal action under the Digital Millennium Copyright Act to ensure that content owners can distribute their streaming media programming in ways that they intend.

We want to offer content to consumers at attractive prices with the greatest convenience in terms of when they want to watch and where they want to watch. By offering the online audience the widest possible array of live and on-demand programming, we will work with content producers to create a huge new market for new and old copyrighted works.

Many traditional models—pay-per-view, syndication, subscription and even “rental” can be replicated online. In the long run, every program will be globally distributed over the Internet. The technology allows for it and consumers demand it. Our critical task is to do so in a way that fairly compensates copyright owners and demonstrates the promise of this richly interactive global medium

Conclusion

In conclusion, let me reiterate the ultimate desire of RealNetworks and our fellow companies with the Digital Media Association: that consumers be empowered to listen, watch and purchase entertainment and educational content how, when and where they choose, and by whatever technology they enjoy most. We pledge to continue to work with our content partners, as RealNetworks has since its inception, to fully realize Rob Glaser's vision of the Internet as a robust, interactive medium for audio and video communication by all people around the globe.

Thank you for the opportunity to testify this morning. I would be pleased to answer any questions you may have.

Mr. TAUZIN. The Chair will recognize himself and then other members for 5 minutes.

Let me point out that I think we are going to follow this hearing with what I think is the behind-the-mirror issues that are going to envelope a consideration of the issues you have presented us today, and that is the issues of privacy on the Internet and how information may or may not be restricted by consumers, and we are talking about how you may or may not restrict the movement of content or isolate its delivery, isolate access to it.

Consumers, I think as we further develop privacy technology and privacy policy, are going to also have some ability to control growing information over the Internet, and much of what you discussed today that do with advertiser-based support for content and obviously privacy controls exercised by consumers can have very in-

creasingly important effects upon the ability of advertisers to work the new markets, and we are probably going to follow up with a hearing on that. I just want you to know this so you can be thinking about how you may be able to contribute to that hearing.

Let me confess to you that I think I share with many of my colleagues I've talked to about the issues you have presented today some of the tension I think Americans feel about these issues. Let me try to express them for you and get some feedback.

One, I think Americans like the idea that they can see all the television they could possibly want to see from as many different places as possible on the Internet. I kind of like the notion that I can watch my local news here in Washington on the stations back in New Orleans and Baton Rouge. I kind of like the idea that I can watch what the candidates are saying in New Hampshire before they come to campaign in Louisiana to see if they are saying the same things. It is kind of nice. I kind of like the idea that I can watch that incredibly interesting campaign in New York. That is going to be interesting for all Americans, and yet, you know, the question is how can we accommodate to that and yet are we going to lose localism.

Are we going to lose some of the features of network distribution that has characterized network programming distribution, network non-dupe rules, and the systems that have supported the local station's ability to finance local news programs and local important events, and how do we settle those tensions, and I'll ask you to respond.

I also want to tell you that from what I am hearing from you, I sense that there are two real concerns expressed out here in addition to consumer concern for more and more video programming and the one on the side of broadcasters, and video content providers has to do with, indeed, localism and protecting the base of advertiser support and network distribution of products. And on the other side, on the content side, is the concern for copying and distribution of digital products that still have value, that still have value in terms of its ability to make profit for the content creator in various ports, either at Blockbuster and other area distributions.

At the same time, you know, Mr. Alben, you said it as boldly as I ever heard it. You predicted that every television, every video content program is one day going to be available to the world whether we want it to or not. It is sort of like MP3.com reached on university campuses. The question is when will university students be able to pick up digital video signals and put them on their web site and broadcast from around the world.

You know, iCrave is just the first puff of wind in this brewing storm, and how do we settle it? So give me some feedback.

Mr. McCallum, first of all, technologically, you tell me you have software, you have equipment that can protect this product, and you have equipment that can isolate the delivery to a certain designated class of subscribers. How certain can you or any of us be that that technology is going to be sustained in the face of kids in any college in America who have been able to break the best codes our best scientists have been able to put together?

Mr. McCallum. Mr. Chairman, in the next 2 weeks, we hope to have an efficiency level set for the software that we're imple-

menting. The invasion by young people and by people intent on hacking into systems knows no bounds. They are driven largely by curiosity. Increasingly, unfortunately, there's a large number driven by commercial intent, but the industry, RealNetworks and other companies, are working to be ahead of those to try to put in place ever increasing protective systems with encryption and so on, and we are part of that process because it is important to us from a business model that we be able to guarantee protection to a certain degree.

Mr. TAUZIN. Mr. Valenti, the copyright assembly is being organized. Will it invest in technology that perhaps can help us resolve some of these conflicts?

Mr. VALENTI. Mr. Chairman, I think that Mr. McCallum will do very well in the motion picture business. He can sure write good fiction.

The fact is that in the trial before Chief Judge Ziegler, the Chief Judge of the Western District of Pennsylvania, as my memory serves me correct, on that trial document on pages 48, 98, 102 and 113, McCallum plainly admits they cannot do it, and Judge Ziegler in his decision said you cannot. There are no technological fixes to restrict it to Canada.

For example, I'm a 16 year old, and I'm in my base in Toronto. I can mirror iCrave to the world instantaneously, and that can happen and we all know that, and he has admitted that in the trial that went on. You have to understand what iCrave is doing. They take these television stations from the twenty-ninth parallel and above, bring them into their web site, alter the picture, and then sell advertising around it, do not ask anybody's permission to do it, do not pay anybody, and they expect you to believe that they are doing something noble, advancing human society.

Fifty-seven percent of all the users of iCrave were in what country? The United States.

Mr. TAUZIN. Why don't you respond, Mr. McCallum and Mr. Alben if you'd like to join in. How do you answer that argument?

Mr. MCCALLUM. Thank you for anticipating, Mr. Chairman, that I might have a response. I might start off my response by reading a short E-mail. It says:

"Hello. I live in northwestern Ontario, and I am not able to get access to cable, and I do not have the money for a satellite dish and service. I live 35 miles away from the nearest city of Thunder Bay. Your web page gave me access, but now they have taken that away. I wish they would let you bring back your rebroadcasting service so that I could have access to shows and programs that I presently do not have access to. Signed, Missing my TV access." This is from Linda, somewhere 35 miles outside of North Bay in very deep snow, I assume. The plaintiffs would have you believe that this woman 35 miles outside of Thunder Bay, Canada is living in Richmond, Virginia because she sent this E-mail through her AOL account. All Canadian AOL subscribers are registered through the system as being in the United States.

The system that we put in place at the time we launched was using what we asked was the best available technology. Since that time, a number of developments have taken place by other companies, and we are taking advantage of those as we build the new

system. We have also augmented those by some proprietary software development that is taking place within our own company and our suppliers, and so we believe that this system which will be available in the next month will be in a quantum leap toward not only the security of our system but for security for other program suppliers on the Internet.

Mr. TAUZIN. Mr. Alben, is that technology reliable in your view?

Mr. ALBEN. We have not tested that specific technology that Mr. McCallum referred to, and I think that any means of trying to deny access based on the URL of the user is probably not going to be sufficient if that is what is being used. So you need to get information from the consumer in order to verify where they are from, and that is a hurdle to entering into the access.

Mr. TAUZIN. My time is up, but, Mr. Karpowicz, you wanted to respond to my earlier comments. I'll let you do that, and then I'll move to Mr. Markey.

Mr. KARPOWICZ. Yes, sir. Thank you, Mr. Chairman. Really, I just wanted to start off by saying broadcasters are not against the Internet. We think the Internet is a wonderful, innovative technology, and it has provided us with many opportunities to provide new services to our viewers that currently did not exist.

As I indicated in my testimony, we do stream news and weather and traffic cameras. A lot of information is being streamed currently. It is my understanding that over 200 stations across the United States currently stream all or part of their newscasts. So to your question about being able to receive New Orleans stations in New York, I think that time is coming.

I think the issue there is those stations have chosen to do that. Those stations who are the copyright holders of that news product have chosen to make that decision. The product was not just plucked out of the air waves and taken away, and it is presented in a format that the stations are very comfortable with.

Mr. TAUZIN. The Chair is pleased to recognize Mr. Markey for a round of questions.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Opening day last year, Red Sox, WEEI radio up in Boston, I am able to put it up and listen to it in my office down here in Washington, DC. That is great. I want to be able to watch it to. That would be great, fabulous. You know?

Back in the 1920's, we actually passed laws which cleared signals all the way for 10,000 miles, and I listen to WBC radio every night when I go home here in Washington, DC. I listen to the 6 or 7 o'clock news in WBZ radio in Boston. We know that there is 25 or so channels across the country that we can do that.

Over the years, of course, this subcommittee panel, we have ensured that we create a balance that makes it possible for new technologies, for new competitors to get into the marketplace. There are always controversial decisions which we make. Back in 1962, this subcommittee had to pass a law so that all TVs in America could carry UHF channels. ABC, CBS, and NBC bitterly opposed that law. They, of course, did not want new UHF channels. They said that would undermine their ability to be able to create just the right kind of a marketplace for the existing three big net works.

In 1978, this subcommittee had to pass a law that insured that the cable industry would have access to telephone and utility poles across the country so that they would also get preferential treatment. Those existing industries, they did not like those laws.

Similarly, back in the 1960's and 1970's, we passed a compulsory license for the cable industry whereby the rates were set by Congress so that we could again give a nurturing hand to the cable industry, and in 1987 and 1988, we forced, this subcommittee forced the Federal Communications Commission to not, in fact, levy access charges on Prodigy and CompuServe, and then AOL as they were in their early stage, and in fact that is what today makes flat rate pricing of the Internet possible and drives its growth, that decision by this subcommittee in 1987 and 1988, otherwise AOL would not be able to purchase Time Warner and the Atlanta Braves.

It was this subcommittee that actually made it possible. It would have died in its infancy or grown very slowly, and, believe me, a lot of people opposed that as well at the time, and even last year Congress acted to allow DVS providers to start local-to-local services and let them wait until 2002 before they had to start full must-carry service. That helps the new service, the satellite service get off the ground, so to speak.

The point of this story line is that this subcommittee has always tried to break down barriers. So the questions before us are multiple, balancing the rights of existing copyright holders against the new technology and the competition which we like to see in the marketplace.

Mr. Valenti, do the copyright owners need protection or tools for enforcement beyond that contained in the RIPO implementing legislation and otherwise contained in existing laws? Do you need new laws?

Mr. VALENTI. I do not think any law is needed, Mr. Chairman. That is what, in my awkward way, I was trying to say. I used Sam Rayburn's words, "Wait a minute to see how this develops", and I think you have been in the forefront of that, you and the chairman. That is all that is needed, is watchful waiting to see who is being denied what.

I think today, except for this loan fellow that Mr. McCallum referred to, that just about 99 percent people in this country can get just about anything that they want to get, and this has been expressed by Mr. Beck and Senator Boren and others here, but we are going to have television stations all over this Internet.

Mr. MARKEY. Let me ask Mr. Alben then. Let me ask, Mr. Alben, do ISPs have the ability to use existing licenses if they adhere to existing rules?

Mr. ALBEN. I don't think any Internet company to date has applied for a compulsory license to transmit television programming, and frankly I think the laws are ambiguous as to whether an Internet company could avail itself, but under certain circumstances, potentially it could.

I think if I can talk about localism for a second, because I think it is a very important principle, that is the bedrock principle of our communications laws. You want to watch the Boston Red Sox games. We broadcast the first Seattle Mariners game in 1995 to a

worldwide audience over the Internet in a radio broadcast, and people in Japan called us and said, Hey, I love Ken Griffey, and now I can finally at least hear about Ken Griffey on the Internet.

Consumers want this, and the Internet—

Mr. MARKEY. Well, when can I see the Red Sox and how much will it cost me?

Mr. ALBEN. We would love to see a marketplace where the Red Sox are putting their signal up on the Internet, and in fact I think that many of them are going to start doing that because they realize they are serving the so-called displaced fan. You are a displaced fan, Mr. Markey, and you want to watch the broadcasting of the Red Sox and perhaps even the Patriots.

Mr. MARKEY. If blackout rules are ambiguous, will you be denied the ability to do that? Do we have to clarify the blackout rules in order for you to be able to do that?

Mr. ALBEN. I think you need to look at what the blackout rules were designed to serve. Clearly, if the goal of the blackout rule is to increase the physical gate attendance at the stadium, then the fact that you are being blacked out from watching the game when you're in Washington DC does not meet that stated goal.

Mr. MARKEY. Does the law have to be clarified?

Mr. ALBEN. I don't know if the law needs to be clarified, frankly. I think that blackout rules should be revised in certain circumstances where there is a consumer demand for the program and where the station can get additional revenue.

Mr. MARKEY. Mr. McCallum, does the law have to be clarified, the black out rule?

Mr. MCCALLUM. I cannot answer for the United States. Sorry.

Mr. MARKEY. Okay. Thank you. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Markey. The Chair is now pleased to extend and now recognize Mr. Shimkus for a round of questions.

Mr. SHIMKUS. Thank you. Clarification: He is not a displaced fan. He is a misplaced fan.

I am a Cardinal fan, for the record.

Mr. TAUZIN. He is a Cardinal fan. That is the nicest thing that has been said about him in a long time.

Mr. SHIMKUS. A long time. I have two questions. Hopefully, I will get to both of them.

Mr. Alben, I was fortunate to hear Rob Glazer at a conference in January, and what he did was he pulled in a data stream of music on an MP3 player, played it for the whole convention hall. Then it took it from the MP3 player to a desk in which he burned the CD. You know, it is all digital. My question is how does the artist get compensated for that?

Mr. ALBEN. Well, in that specific example I am familiar with, the artist was compensated when we purchased the CD. So let's say it was a Beck CD. Beck received whatever payments he gets from his record label when the physical CD is purchased, and I think it is very clear that people have personal use rights to take their CDs and play them on their computers and also to put them on to a portable device, and in fact that is going to increase the sales of CDs because then people realize, hey, there is a great new way of enjoying music, I'm going to go out and buy more CDs.

I think the case that you are worried about, legitimately, is when a user would then take that CD, multiply it a hundred times and send it out over the Internet, and clearly there is a point where personal use rights have limits and where they start to deteriorate from the market.

Mr. SHIMKUS. I agree, and I think that is our challenge.

And, Senator Boren, I did not hear all the testimony because I was coming back from the vote, but SoonerSports.com is an attempt to make sure that you capture the web TV or the stream market; is that correct?

Mr. BOREN. That's correct. In other words, of course we have our negotiations for live broadcast, but typically after the time of the live broadcast, we will then put some of this up for our fans all over to enjoy, and this allows us to have control over the way it is done and to keep control of our intellectual property; but we all have the strong incentive to get it out as quickly as we can to those misplaced fans around.

Mr. SHIMKUS. If they are Sooner fans, most of them are going to search, and they are going to use Sooners, and it is going to pull up. They are not going to pull up iCrave to try to find a Sooner football game.

Mr. BOREN. No.

Mr. SHIMKUS. So my question to the local broadcasters, I am a big defender of local broadcasting. I have seen how it has helped save communities. I guess the question for me is I do believe this is a debate of a rising tide, expanded markets. Are you or why are not you taking advantage of the competitive atmosphere and developing a similar Sooner sports.com to be prepared to more broadly disseminate your signal so that you are in direct competition to industries like iCrave.

Mr. BECK. We are doing that. We own the URL High SchoolHockey.com, and what is so wonderful about the Internet is that came out of Duluth, Minnesota, our little station there. They created that site. We own a big chunk of something called MyTVSshop.com which is about television and its electronic commerce sites.

So we are perfectly willing and able to compete on a national or international basis with anybody.

Mr. SHIMKUS. My point is for the specific station. Again talking baseball today, KMOX is a carrier of the St. Louis Cardinals.

Mr. KARPOWICZ. Right.

Mr. SHIMKUS. It would be easy for me in a remote location to be a displaced fan to call up KMOX, and if they are streaming the audio, then they are capturing that market, and they may be competing with someone else, but it is more likely for me knowing the locality to go to a KMOX versus an iCrave.

Mr. KARPOWICZ. I think in those cases where we own the copyright, specifically with our local news, we are very prepared to stream that video. The issue comes in which we are running syndicated product like Friends or Oprah or CBS product or NBC product. We have no rights to let that go out. So to the extent that over 200 local television stations currently stream all or part of their local news product, clearly that is the direction this is going.

Mr. SHIMKUS. Okay. You brought up a good point about your rights to stream outside of your geographical barrier based on your agreement with the network, and I think that is something I did not think about.

So I yield back my time. Thank you, Mr. Chair.

Mr. TAUZIN. I thank the gentleman.

The Chair recognizes the gentleman from Ohio, Mr. Sawyer, for a round of questions.

Mr. SAWYER. Thank you very much, Mr. Chairman. I am not sure that we have really gotten a full answer to the question about how you actually limit geographically what can be done with the signal. Maybe I am just not understanding what you are saying, but even if encryption technology is implemented to create these geographical barriers, how do you prevent a subscriber from turning around and distributing the product received in that way?

Mr. JASZI. To me?

Mr. SAWYER. Yes, or anybody. I mean I am just at a loss to understand the argument that you can create these barriers, and I have not heard the answer to that question. I was addressing it to Mr. McCallum, but more broadly I am particularly interested in how the absence of geography on the Internet creates circumstances where law or regulation can be enforced in a compatible way across a variety of national legal jurisdictions. But answer the first question first, and then others can respond as well.

Mr. MCCALLUM. We had a problem drawn to our attention in January that there were pirate sites out there were just drawing our stream to the sites and then redirecting them to anybody who came on. They came in through what is known as the back door. Part of the work that we are currently doing is locking that back down solidly tight.

Mr. SAWYER. Okay. They were not subscribers; is that correct?

Mr. MCCALLUM. No.

Mr. SAWYER. Okay. What do you do about subscribers?

Mr. SAWYER. The nature of the security system is that the stream is sent to an individual computer, to an individual IP address. We have locked down the ability from the beginning putting the streams up, preventing copying so that nobody could copy it to their computer, and we believe that the current system that we are implementing is a system that will prevent the retransmission from that computer to others.

Mr. SAWYER. Does everyone else subscribe to that?

Mr. VALENTI. Mr. Congressman?

Mr. SAWYER. Yes, sir.

Mr. VALENTI. That ain't so, and you go to see any expert in Internet or computer, you cannot do it because anyone can pick up that signal and do what is called mirror, and that is transmitted then to a waiting global world of 6 billion people instantaneously. There is no way you can do it.

Mr. SAWYER. Yes, sir?

Mr. MCCALLUM. Congressman, there would be, I would think, little difficulty in the individual who currently takes his cam corder into a movie theater, captures a new release, exhibits it on the Internet, and takes the same cam corder and pointing it at a com-

puter screen and doing the same thing. I would suggest that part of the solution—

Mr. SAWYER. But the medium of distribution is substantially different, of course.

Mr. MCCALLUM. No, they are both on the Internet. I'm suggesting that they are both being distributed to be Internet, and they are obtained in that exactly the same fashion. What I would suggest that part of the solution may be to make these products so readily available under arrangements to allow the flow of copyright payments back to the original creators that you effectively reduce the temptation to go to these means in order to get a substandard product.

Mr. SAWYER. Mr. Beck, you have been trying to—

Mr. BECK. Sorry. Mr. Valenti actually responded as I would have, Congressman.

Mr. VALENTI. Let me just say that I do not want to dominate here, but I have got to respond to this. When a man goes with a cam corder into a theater and picks that up that, records that program and then distributes it, he goes to jail for that.

Mr. SAWYER. Yes, he is in violation of law.

Mr. VALENTI. It is a felony offense.

Mr. SAWYER. Yes.

Mr. VALENTI. And as a matter of fact, we have put a number of such people in the slammer over the last year or 2. That is exactly what happened. So you cannot take digital which is ephemeral. It comes into your computer, then goes to world, and then equate it was a physical video cassette in analog format or digital format or whatever you want to call it. It's totally different.

That is what I said in my opening remarks. This is a miraculous, fantastic new entrant into the human society, ranking with Guttenberg movable type and the invention of television, and it cannot be equated with satellites or cable or video cassettes in the analog format; totally different, sir.

Mr. SAWYER. And it should not be possible with a license to go through that medium what would be illegal through any other medium; is that what you're saying?

Mr. VALENTI. You want to be on a level playing field. Then you take your chances by going to jail by doing what iCrave is doing.

Mr. SAWYER. Thank you.

Mr. ALBEN. Mr. Sawyer, if I may talk a little bit about mirroring, there are technologies that allow for mirrors. The fact is that once someone mirrors a stream, in order words starts to retransmit what you would call a signal, they are visible. Right? They have to be visible to the whole world, and you can know where they are and where they are operating from, and they should be taken down if they are mirroring a stream without permission.

Most mirroring that occurs on the Internet is done with the blessing of the content producer. In terms of the security of the stream itself, the RealNetwork system as well as the Microsoft system and Apple system for streaming all have copy protection mechanisms built in, and in the rare circumstances where hackers have been able to hack into a stream and record the stream, we have invoked the Digital Millennium Copyright Act to get injunctions be-

cause clearly someone should not be able to make the technology that's primarily designed to copy pirate streams.

Mr. SAWYER. Thank you, Mr. Chairman.

Mr. TAUZIN. The gentlelady from New Mexico, Ms. Wilson is recognized for 5 minutes.

Ms. WILSON. Thank you, Mr. Chairman. I had some questions that arose from some of the previous answers and some of the testimony which I have been reviewing here.

Mr. Karpowicz, you talked about the television stations now cannot—you do not believe that a television station now could broadcast its signal over the Internet, it could not broadcast Friends because that would be outside of its broadcast area. Is it your interpretation or do most television broadcasters have the view that they are constrained by current law from doing that?

Mr. KARPOWICZ. I believe so because we do not hold the Internet copyright on Friends, for example. When we buy that program, we buy that specifically for our DMA or our market area, and that is really the issue with the Internet, is that it is not bound by any geography, and there are no geographic boundaries. So to the extent that when we buy that program, and when we purchase that, we have bought it for a very specific area.

Now, with our newscasts which is content that we produce and we have the copyright on that, it can be widely distributed. That can go out on the Internet because as far as we are concerned, that is our product.

Ms. WILSON. Thank you. Mr. Alben, you were talking about the Digital Millennium Copyright Act and injunctions that you would get on mirror sites and things. Is it your view that—does the law need to be changed in any way to protect or further protect copyright holders or are the mechanisms there in place now to do what needs to be done?

Mr. ALBEN. I think we believe that right now both at the existing what you could call the old U.S. copyright law and the Digital Millennium Copyright Act provide really specific penalties. After all, the Motion Picture Association and the other plaintiffs were successful in invoking copyright law to get the TRO. So it's clear that if someone is violating copyright by duplicating something without the permission of the copyright owner, that that is against U.S. copyright law.

Now, when Congress passed the DMCA, they also recognized exactly what Mr. Valenti said, is that analog and digital present different problems. With digital, you can make near perfect copies and redistribute those copies. So Congress took the extra step of creating new laws that say if you are specifically going to create a technology that breaks encryption or that breaks a copy protection mechanism, that in and of itself is a violation of the DMCA.

So I think that these two laws are working together, and over the last few weeks we have seen, what, four or five lawsuits filed regarding distribution of sound recordings, distribution of motion pictures where you can see that the laws are being put to the test.

Ms. WILSON. Mr. Valenti, do you think that there needs to be changes at this point? I know you have put your copyright coalition together. Is it working but cumbersome? Are people ignoring it? What is your sense?

Mr. VALENTI. You mean what is working right now?

Ms. WILSON. With respect to any changes needed to the copyright law.

Mr. VALENTI. No, I said earlier to the chairman, Madam Congressman, that I did not think that any new laws were required. As Mr. Alex pointed out and rightly so, the Digital Millennium Copyright Act is working, and indeed the courts are instantly recognizing that there is no ambiguity to this law. What I am saying is that I think the Internet should be allowed to continue its spiraling growth and you keep a watchful eye to make sure that all goes well in the marketplace.

I do not think there is need to change anything at this time or add anything at this time.

Ms. WILSON. Thank you. I yield my time, Mr. Chairman.

Mr. TAUZIN. Thank the gentlelady. The gentlelady from Missouri, Ms. McCarthy, is recognized.

Ms. MCCARTHY. Thank you, Mr. Chairman. I would like to visit with Mr. Valenti. It is always a pleasure to have you here, and I congratulate you on accomplishing the copyright assembly that you announced to us today which I think creates an important new voice in the private sector on copyright matters.

However, I noted a very important voice is missing from your assembly, and they are my constituents. I suspect, actually, they are constituents of every member on this committee and in fact perhaps are even family members of some members on this committee.

So I would like for you to tell the committee why they've been excluded from the assembly. They are the recording artists, and their voices make movie theme songs hits for your assembly members such as Disney and Universal and the other studios that are members of the assembly. Their songs make hit programs like MTV for your assembly members like the National Cable and Television Association. Their music creates the sales for your assembly members such as the Recording Industry Association of America, Sony and other record labels. Their performances at pregame and half-time encourage viewers to tune in and stay tuned at sporting events such as the Super Bowl, earning your assembly members such as ESPN and other TV corporations lucrative revenue from advertising.

I myself am a Faith Hill fan, and I stayed tuned at half time because I wanted to hear her. These recording artists are represented by the National Academy of Recording Arts and Sciences. Next week it's NARAS that is going to produce the Grammys which 25 million people domestically watch on TV. That is the second largest viewing audience after the Oscars, which I believe you have some interest in.

So why is NARAS missing from this new assembly, and clearly since copyright laws affect recording artists personally, why are they not included in the room?

Mr. VALENTI. Well, I am right now trading phone calls with Mr. Michael Green who puts on the Grammys, and I am hopeful of having his organization in there. Ms. McCarthy, I want you to know that this assembly is open to every person or enterprise to whom copyright is indispensable to their future, and we welcome it. We have all of the creative guilds in here. We have all the music orga-

nizations, and those that are not in here will be before the next few days are out.

Mr. MCCARTHY. I anticipated that would be your answer. When you made this announcement, I excused myself from the committee and called Mr. Green to find out why he was not on the list. He said they learned about it through the net, the Internet, and that he initiated the call to you.

Mr. VALENTI. He did, and as a matter of fact, may I just say I blundered. The fact is putting together this list, I frankly did not think about it. It was a terrible blunder on my part, and I deeply apologize.

Ms. MCCARTHY. Well, I just want to tell you that I represent Kansas City where there are a whole lot of artists. You know, this is a jazz historical place, and I would love you to come and visit, but it seems to me that this Congress even overlooks including recording artists in the room at critical times.

Last year, during the discussions of the omnibus appropriation bill, a change was made in the copyright laws that now deny them—artists who have signed recording contracts after 1978, they will not be able to regain their rights after the 35-year waiting period that is specified in current law. Nobody told them to come in the room and talk about it. Nobody told them to be there at the table. So special interest decided to make this change, and frankly on behalf of the recording artists, I think it is time we all woke up and made them part of whatever the future holds on things like the Internet. Without them, as I said in my remarks, do you think you could sing like Faith Hill did at half-time and make me tune in? Maybe once, but, honestly, they are what fuels the larger entertainment industry, and I appreciate your honesty and I hope you will think in the future of the recording artists in all that you do with regard to property rights, and intellectual property rights in particular are personal to them.

Thank you Mr. Chairman.

Mr. VALENTI. I cannot wait to embrace Mr. Green and his organization if I can just get him on the phone.

Mr. TAUZIN. We got a computer in the back room.

Mr. VALENTI. Maybe he has got a web site so I can contact him.

Mr. TAUZIN. I thank the gentlelady.

The Chair now recognizes the gentleman from Florida, Mr. Stearns, for a round of questions.

Mr. STEARNS. Thank you, Mr. Chairman, and listening to this debate has been very edifying. Let me take my colleagues and also the panelists and the people in the audience to this comparison: Direct TV, satellite TV when you broadcast that, it is not going to just a region. It is going hemispheric. So when people say satellite TV and cable TV are much different than the Internet, that might be true for cable, but I do not see it that different for Direct TV where it is going hemispheric.

Okay. Now this committee, and as Mr. Markey pointed out, the incremental steps in the last 30 years we have done to protect virgining new industries, and as he pointed out, AOL would not be existing today if we had not in 1997 gave them permanent access to the FCC. So I say to the broadcasters, I understand Sam Rayburn's "Wait a minute", those three dynamic words, "wait a

minute”, and I am a conservative and I believe in wait a minute, but I cannot help but think when I am sitting here looking at this, probably that it could correlate to broadcasting of direct television.

Now, these people, Prime Star and all these people, they pay compulsory license fees. They pay a local-to-local fee. Then they pay for a distance signal, and it is digital. It is not analog like Mr. Valenti was talking about. This is digital that goes hemispheric. So tell me, somebody on the committee, why we cannot bring an analogy for the satellite broadcast television to the Internet television and say, okay, either the FCC, the Library of Congress, or Congress or somebody could not allow access for Internet companies in the same of analogy that we have done for satellite TV?

Mr. BECK. Can I address myself to that?

Mr. STEARNS. Okay.

Mr. BECK. The satellite companies do not alter our programming, period. If these people had come to us then—you know, we have got a lot of Canadians. We have got this poor woman in Thunder Bay, and she really wants WKBW's programming, and we are going to do you the service of redistributing it to her. We would have said that is a pretty good idea. What he does is take our programming and puts his ads on it and alters it. So no satellite company does that, sir.

Mr. STEARNS. Okay, but Mr. Beck, let's say we stipulated that they could not do that, and we made it against the law for the Internet companies to do that. We can do that and prevent them from doing it. So that would allay your fear and concern.

Mr. BECK. Yes, it would. I mean he would not be on the panel anymore. He would have to make his own content and redistribute it, but if people are just interested in the redistribution of the good stuff we do, hey, that's all right.

Mr. STEARNS. Okay.

Mr. KARPOWICZ. The biggest issue, Congressman, is with the satellite example that you are using. That is why local into local was implemented, to prevent the importation of distant signals coming in over the top of my copyrighted material. So there is a very distinct and huge difference between the satellite model and the Internet model.

Now, currently, as we know, there is no technological fix to limit the Internet to my specific marketplace, whereas with satellite in fact no distance signals can be brought into my market, and that is why we created the provision or, in fact, you all created the provision.

Mr. STEARNS. How do you know that when a person broadcasts a satellite that it is only going into one region?

Mr. KARPOWICZ. Well, there are cards that go into the satellite receiver.

Mr. STEARNS. No, but I mean we have had up here in the hearings what we have gotten is going way out the region and these people want to have access to it, and suddenly they get cutoff and they get upset about it.

Mr. KARPOWICZ. But no distance signals should be coming in. That is the whole concept behind local to local.

Mr. STEARNS. Okay.

Mr. KARPOWICZ. That it protects my franchise in my unique marketplace.

Mr. STEARNS. Mr. Alben, am I wrong that there is some kind of analogy between what I am trying to look for? And I think every elected official, before they do anything, they want to say is there something that we have already done here, without rediscovering the wheel? And is there some way to allow RealNetworks in the very near future to start broadcasting local-to-local, as well as, you know, other information without being cramped here and have the copyright to do so?

Mr. ALBEN. Well, I think the geographic restriction of local into local is a problem because of the nature of the Internet being a global medium, as I said in my testimony. There would be ways devised to limit people from accessing a signal if they were not in a local market, but what we would rather do is say when we rebroadcast the transmission—for instance, let's take a baseball game. When we did the Seattle Mariners baseball game, when we sent it to Japan, I'm sure the local advertising for the local beauty parlor did not make much sense the people in Tokyo or Yokohama who are listening to that game even in English.

What we would like to do is say with the broadcaster, hey, we are going to sell an ad that will have a national or international audience, but we will share our ad revenue in some way so that the broadcasters benefit from the expansion of the terrestrial signal, and that's really the way that this is going to go. That is why I say that this is going to happen, because we are smart enough with broadcast stations and others to figure out ways of creating new revenue and sharing that revenue.

Mr. STEARNS. But would not you like to go to one place to get a copyright license so that you can do it?

Mr. ALBEN. It would be much more convenient if you could have a mechanism to get a license rather than going to each individual station. I do not know how many broadcast stations there are in the United States, 30,000.

Mr. STEARNS. 1,600, I'm told.

Mr. ALBEN. 1,600, so the physical challenge of just negotiating license deals—

Mr. STEARNS. It's impossible.

Mr. ALBEN. [continuing] would prevent it from happening, and it would be very nice to have some sort of clearinghouse, some sort of mechanism where someone who wanted to retransmit a signal could go and with permission get that done and pay for the content.

Mr. STEARNS. And, in fact, the broadcasters would benefit.

Mr. ALBEN. They would if we—

Mr. STEARNS. I mean we would make the copyright license and the royalties expensive, and if they wanted to do it, they just had to pay a high amount of money.

Mr. KARPOWICZ. That exists right now with companies like Broadcast.com. Television stations can work out a deal with Broadcast.com to stream their news broadcasts which they own the copyright to. So it exist today.

Mr. STEARNS. Just with one group and not the whole—

Mr. KARPOWICZ. Well, each individual station would have to make their own deal.

Mr. STEARNS. Which makes it impossible.

Mr. ALBEN. But the history of Broadcast.com was an incredibly innovative company, and Mark Kuben, in all of his energy, he went around for 3 years in the banging of the doors of sports leagues local stations, the NCAA, and all the leagues and saying, Hey, I want to put your signal up on the Internet. It took him 3 years to assemble that kind of base, and now we have a Broadcast.com and others that you can go to, but it took—it was solving the licensing issue that took so long, and I do not think that is going to work going forward.

Mr. MCCALLUM. Mr. Stearns, might I add something?

Mr. STEARNS. Sure.

Mr. MCCALLUM. The simple system you are describing is the one that exists in Canada today. That is why we are legal in Canada.

Mr. STEARNS. So the question is are you arguing for this same kind of system in the United States?

Mr. MCCALLUM. Well, I am not arguing for it or against it. I am just offering it as an example of another jurisdiction. Clearly, the broadcast conditions in Canada are distinct and different from what they are in the U.S. The complexities here may be different. The history is different.

Mr. STEARNS. But you are saying it is a working model that works in Canada.

Mr. MCCALLUM. Correct.

Mr. STEARNS. And you are saying this is a model, Mr. Chairman, that works in Canada and does not restrict television on the Internet and so the real question is when will it come to the United States, and in what way, and how can we be sure that the broadcasters are protected, and so I think it is a challenge for this committee.

Mr. TAUZIN. It certainly is. The gentleman's time has expired, but I will allow any response.

Mr. ALBEN. There is another element to your challenge, Mr. Stearns. I think it is an excellent question. Is the international dimension of this medium. Let's say we had a signal, but you were requiring under a compulsory license to have a geographic restriction. Well, then you are going to have the French perhaps saying, oh, well, if you are going to let this retransmission go out over the Internet, it has to be the French language or it has to be 38 percent French content.

The strength of our market is that our programming, the programming of local stations and of the networks and of the sports leagues, has an international audience. We don't want to go down the road of geographic restrictions if we are not willing to live with foreign countries saying, oh, I do not want that content coming across my border.

First of all, it is almost impossible to police. Second of all, it is not good for our industry. We want these revenue streams to be driven all over the world.

Mr. VALENTI. May I just say, Mr. Congressman, first I allay myself with what Mr. Alben is saying. We oppose geographic restrictions. That is anti-freedom, but in the interest of full disclosure,

Mr. McCallum did not tell you that the broadcast stations in Canada are suing him right now in the courts saying he does not have any mantle of compulsory license. That is in the courts right now, and we will just have to wait and see what the Canadian judicial system say says about this.

Mr. TAUZIN. The Chair is now pleased to recognize the gentleman for New York, Mr. Engel for a round of questions.

Mr. ENGEL. Thank you, Mr. Chairman, I would ask unanimous consent to put my statement into the record.

Mr. TAUZIN. Without objection.

Mr. ENGEL. Thank you very much.

Everybody, the issue to me is really balancing the rights of current copyright holders. I think it is only fair that we do that with the public desire to have access. The copyright holders versus unlicensed distribution, Mr. Markey I thought said it very well when he said that he liked to listen to games. I would like to listen to Yankees and Mets games, and I very often try to get the signal here as well.

I am wondering as I listen, and Mr. Sterns had really gone down the line of what I was going to say. It seems to me that in the future there has to be some common ground, because obviously this is new technology and you cannot put a lid on it forever. Sooner or later, people are going to demand that they have access to it.

And so it seems very simple to me, in a way, that how do we again balance the rights of the current copyright holders with the public's desire to have this technology? I would like to hear from the broadcaster side. Compulsory license, why cannot there not be a compulsory license? I think Mr. Alben suggested it as similar to what cable and satellite has today with the exception that the Internet companies will not have to comply with the geographical limitations.

You know, what does this all mean, the future of local broadcasting license, with the Internet taking distribution in a global direction? What happens to location? I would like to hear from the broadcasting side. Why can there not be a common ground? There seems to me, you know, we talked a little bit in the answers about compensating people with advertising revenues. I mean everyone on the panel is very bright and there are lot of bright minds out there. Why can we not come to a common ground for the future?

Mr. KARPOWICZ. To your point about the compulsory licenses, I think you cannot ignore the geographic limitations. I think the geography is the key here, and the inability of the Internet to be limited to one market, one specific market is really the fatal flaw that we see in that system. In addition to that, with compulsory license comes must-carry, retransmission consent, Syntax, sports black-outs. There are a lot of other issues associated with that. So to the extent that we cannot just put geography aside, geography is critical to this whole discussion.

The other point I'd like to make, and Senator Boren mentioned it in his comments, the ground-breaking deal that CBS did with the NCAA this year for basketball tournaments included not only the broadcast rights but the Internet rights as well. Now, I think this is one of the first major sports deals that has included the Internet provision, and I think this is the direction we're going to

see more and more major deals with sports leagues and the NCAA take place as we go along, that deals will include not just have the broadcast rights but the Internet rights as well.

Mr. BOREN. Just a week ago the baseball owners now have also moved in that direction and are establishing a mechanism for bargaining for baseball rebroadcast rights. So I think really what is happening is there is such a strong push for those who are creating the program that want to get it out to widest possible audience as long as you have some control over the appropriate way, for example, as we would want to see it with intercollegiate athletics and the way it's broadcast and that you have assurance of the revenue stream, that the revenue stream will not be destroyed.

So I think this market is already beginning to work without going into the scamp of what might have to be attached to compulsory licensing that might have unintended consequences and actually begin to limit what the Internet possibilities might be in the long run.

So I would say I think the market over the next—things have moved so quickly already. Over the next 12 to 24 months, I think the market is going to play out in a way that is probably going to make unnecessary additional regulatory schemes.

Mr. ENGEL. I would like to hear why not an exception for geographical limitations, as Mr. Alben suggests, given the Internet nature as global medium. Why would that not be something that would be feasible? Would anybody like to comment? Mr. Valenti?

Mr. VALENTI. Well, I don't think—the truth is we can say geographical limitations. It's like President Johnson used to say. "You can tell a man to go to hell, but getting him to go there is another proposition." And you can say you've got the technological image to do this, but it does not exist. That's the key point. It does not exist.

Mr. ENGEL. Mr. Beck, do you have any comment on that?

Mr. BECK. We really have a wonderful system now. You flow. You have got local broadcasters providing extraordinary penetrating local news, weather, and sports in their markets and in partnership with the studios and the networks who provide us with extremely good content with which to pair our good work. If his content needs to be exclusive in Buffalo, and he does not want to sell the Internet rights, then that's up to him. I want to be his partner. I want Friends on my air. So I will negotiate with him and get it. If he does not want to sell it to iCraveTV, that's up to him. He has the best idea of about how to use his product.

So I think we have the most extraordinary system in the world and nobody can compare the penetration of our local broadcasters into their communities, and that's because of the partnership that exists. So I'm not only proud to be here sitting with Mr. Valenti, but our business is based upon the partnership with these copyright holders, and it's necessary for them to really—I'm following their lead. They are great partners, and if he does not want to change the copyright laws, I cannot see any reason why we should do it. It seems to be working awfully well.

Mr. JASZI. If I might say I'm less skeptical than Mr. Valenti about the possibility of implementing appropriate geographical restrictions if such restrictions would be deemed appropriate through a combination of new technology and the very stringent criminal

penalties against the violation of technical safeguards that have been discussed earlier today. Those are a very potent combination taken together, and I see no reason to assume that at the beginning of this discussion that that combination would not be sufficient to implement meaningful geographical restrictions were it the will of Congress to impose such restrictions on an Internet TV compulsory license.

Mr. ALBEN. If I could add a second to Mr. Engel's question, I guess our question, and forgive us we have been accused of wearing binoculars and only seeing far into the future, but why would a broadcaster not want their local programming, sports, news, weather, to be transmitted from Buffalo to Florida if someone was on vacation if there is not that somebody that is extending the signal reach and therefore extending your advertiser base?

Mr. KARPOWICZ. Let me answer that question. As it relates to iCraveTV, the first part of that equation is the signal is distorted. Our picture, by the time it gets to that individual in Florida, has been brought down to a little-bitty box. There is advertising all around it that is inconsistent, potentially, with the advertising that we have already sold. So that is—you know, that is the first problem.

The second problem, if it's our entire broadcast day, we do not own the copyright to Friends, or we do not own the copyright to NFL football. We do not own the copyright to a lot of the programming that we carry.

Mr. ALBEN. Just your local programming.

Mr. KARPOWICZ. Then it should be the decision of the local broadcaster to do that.

Mr. BECK. We do that.

Mr. KARPOWICZ. And as I indicated, there are over 200 stations in America that currently do that, and that number is growing every day. I think local broadcasters are starting to understand what Congressman Markey mentioned earlier, is that people who are displaced do have interest in what may be going on in their old hometown or in a distant place.

So local broadcasters are taking the initiative and making that happen, but we should not have that taken from us.

Mr. BECK. Mr. Engel?

Mr. ENGEL. Yes.

Mr. BECK. I'm sorry. Excuse me—

Mr. TAUZIN. The gentleman's time has expired, but you can respond.

Mr. ENGEL. Thank you, Mr. Chairman.

Mr. BECK. We do that, and we broadcast all of our local news, weather, and sports. To demonstrate in an anecdote just how effectively our system works now, we take our local news and we, in the past, have put major league baseball clips into our news. We believe it's fair use to do that. Well, our friends and colleagues at major league baseball have decided to tell us to no longer to carry the clips in streaming video. They want it to be on our air, but they are not happy to have it on our television station's streamed video because our streamed video, being digital, can be archived and might prevent them from profiting from that picture of Sosa hitting the home run.

So when they called us and said would you please take that out, I argued with them as best I could—I'm trained as a litigator—and I gave in because they are right. It is theirs, and we said that's fine, from now on we will put up a board that says, I'm sorry, Major League Baseball does not want us to stream this 30-second clip, and that's what we did.

So the system works great. iCrave never called us.

Mr. ALBEN. It does not work for the baseball fan, though, that wants to watch that highlight, and if I'm a Seattle Seahawks fan and I want to watch my game and NBC have decided for that day that I'm supposed to watch the Pittsburgh game, it does not work for me either, and the fact is if I'm an additional member of the audience and want to tune it, I'm going to paying somehow. Right? I mean they are going to be paying by subscribing to the service, or I am going to be paying by watching an advertisement that somebody sells so the audience can be increased, and the sports leagues, while they want to maintain the current system of geographic limitation, have a revenue opportunity that they are not recognizing.

And it is very good to hear the CBS Internet deal because those are the kind of deals that are going to move things forward.

Mr. VALENTI. Mr. Alben, let me just say to him if you want to have a Real Player, I'm told he will sell it to you on your web site for \$35; is that correct?

Mr. ALBEN. The Real Player is distributed for free.

Mr. VALENTI. What do you charge \$35 for?

Mr. TAUZIN. Mr. Alben, use the mike, sir. We have to record this.

Mr. ALBEN. I'm sorry. The Real Player is distributed for free, and we have distributed over 90 million of them for free. We have distributed several million of our Plus Product which we sell for \$29.99.

Mr. VALENTI. All right. Since I'm a consumer and I want to have the best, I want the compulsory license to buy that \$35 thing for \$2. Would you agree to that? A compulsory license or since you believe everybody ought to have the right to see and do everything, I want the right to have your enhanced machine or whatever you call it, and I want to do it for \$2. How do you deal with that?

Mr. ALBEN. I'm sure you want to go into a dealership and buy a Mercedes for, you know, \$100, but the consumer sees the utility in buying the enhanced product, and the compulsory license is not going to necessarily cannibalize the revenue stream of stations. It's going to extend it in the long run.

Mr. TAUZIN. I want to thank the gentleman from New York for stirring this up.

Mr. ENGEL. Mr. Chairman, I did not realize my mischievous question would have such an enlightened discourse.

Mr. TAUZIN. You had one more thing you wanted to add, Jack?

Mr. VALENTI. No, the only thing I wanted to add was, again, as LBJ would say, "It always depends on whose ox is getting gored," and that's what this whole proposition is all about.

Mr. TAUZIN. Then the chairperson will recognize the gentleman from Oklahoma, Mr. Largent, for a round of questions.

Mr. LARGENT. Thank you, Mr. Chairman.

Mr. Alben, I wanted to go back to something that you said about the CD scenario when my colleague, Mr. Shimkus, was talking. Sometimes what we say and what we hear in this room is not what really is happening on the street, and I had an on-the-street discussion with my 15-year-old son who is a freshman in high school, and he was mocking my daughter who is 18 years old and a freshman at the University of Oklahoma because she had signed up for one of these CD-a-month clubs. She had just received a big stack of CDs in the mail, and he was mocking her because of how foolish it was for her to pay so much more for her CDs, \$10, \$11, whatever they are, a couple dollars less than you get them in a store, and he said nobody is buying CDs anymore. He said everybody is burning their own CDs. They just pull it off the Internet. You can put whatever songs you want on there, burn them in there, and he said I'll never buy a CD again in my life, it's too expensive.

So that's a real world example in Tulsa, Oklahoma. I am going to be really curious to see if in a year from now we do not see a decline in the purchase of CDs, and I'm curious, if it came to pass that the latest release, The Hurricane was available in digital quality that was streamed on the Internet, if in fact Blockbuster Video's stock would not decline over the course of a year as well. I think it absolutely would because people could pull it off the net and make a DVD quality reproduction, and they would never have to rent another movie on VHS.

Senator Boren, you said something in your testimony that's been mentioned several times. I wanted to ask you about this. You talked about a TV deal that CBS did with the NCAA, and it included an Internet agreement. Does that agreement insulate you from iCraveTV or is that still an issue?

Mr. BOREN. Well, that's still an issue because, of course, if people can stream over, overstream the people that are paying us for the rights to rebroadcast, you know, they are no longer going to go into those packages with us that are such an important source of revenue. So, you know, we are talking about something that provided a very large amount of funding over an 11-year period with CBS. It was a minimum of \$6 billion, and if others can simply not pay anything and be able to get that, then they are not going to be able to negotiate with us in the future with those kind of rights, so your revenue stream for intercollegiate sports begins to dry up, and as I pointed out, 90 percent, over 90 percent of the 1,000-member colleges and universities of the NCAA are not breaking even on their sports now, especially as they're struggling to provide more opportunities for women's sports, for example, and so these universities are already having to make these kind of decisions about putting central university funds into sports versus faculty salaries, libraries, and other things.

The pressure if that stream dries up, the pressure to reduce opportunities for student athletes is going to be enormous. So all we're saying is the market is beginning to work. This is working in a way that protects our intellectual property. It's going to be get out on the Internet, more and more of this sports programming including ours, but it's doing it in a way in which we, the NCAA negotiates for us will be able to continue that revenue stream to intercollegiate sports.

So it's working and we should not plunge in at this point and try to change something that is working.

Mr. LARGENT. Well, let me rephrase my question if I can. You are saying that since you have this licensing agreement with CBS, now they are putting on the NCAA game of the week on CBS.com so that people will flow to CBS.com which they can get in Thunder Bay, Canada just as easily as they can get—

Mr. BOREN. That is exactly right.

Mr. LARGENT. Okay. But what would prevent rebroadcasting that? In other words, somebody pulls that signal off and wants to put their own special ad around the border.

Mr. BOREN. Well, the current copyright law protects us in that regard, and that is exactly what happened in this case, and when you have people collecting their own revenue, their own advertising and altering then the original programming, at least so far the courts have enforced that right. Now, if the courts ever stopped enforcing that right what would happen is our revenue stream would vanish because those that are now paying us for exclusive rights would not have exclusive rights and they would not be able to afford to pay you, certainly not at the level they are now paying us.

So it is a real threat and it is the reason why I also say that we also have a tremendous incentive. I want to see what we are creating in terms of sports programming. I want to see the contribution of that expanded because as that market grows and it is expanded through the Internet, there is going to be, in theory, a greater revenue stream back to us, back to LSU, and other institutions around the country, but we have to be very careful about how we do that.

Mr. LARGENT. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, sir. The Chair recognizes himself.

Let me see if I can make an observation and get your reaction to it. It seems to me that we are still debating some of these issues or thinking of some of these issues in a world still defined by the differences in pipes and delivery systems of information. It also seems to me that that's about to change pretty radically, that as we move to broad band digital services delivered over enhanced systems capable of extraordinary capacity and data that includes video, that anyone who thinks they can survive in that world by being a telephone company or a cable video company or a satellite video company is going to find out they get left behind quickly in the dust bin of economic history, that as we move into the broad band digital age, the television set will be the monitor for the Internet, and data services flow to it that are going to include massive amounts of video and audio and other data services to us.

And if we begin to think of what that record looks like, does not it make sense for us to have a common policy as it applies to the protection of content and distribution of content rights over that kind of a system? Because it does not matter whether you are a satellite company or telephone company or electric company, for that matter, or a cable company. If you are all delivering broad band services, and that's where the world is going, to a mix of digital data that includes all those services combined into my television set on a worldwide global network, does not it make sense for us to be thinking of policy that will cut across that whole spec-

trum and apply the delivery of these services and the protection of content rights in all of these areas, policy that permits the contracting and the technology developments that will enforce the contracts, protect the consent or protect the delivery of the content, if that is possible, to whomever is contracted to send it or receive it rather than thinking of trying to define a policy for cable and one for satellites and one for telephones and one for who knows what, other wireless or other wide systems when they eventually develop?

Please feedback to me on that, any one of you.

Mr. BOREN. Mr. Chairman, as the novice in this in terms of the technical details, I would just say in many ways what you are talking about is happening. Just look at the NCAA-CBS-internet package. In a way, that is happening right now in the marketplace. In other words, we are now negotiating contracts for the use of the Internet fully. It is in its fledgling stages. Some of those details will even been worked out in terms of appropriateness in programs and the way it is done, but if I think we watch the market over the next year or 2, given the current status and the ability to go into courts and protect yourself through the existing copyright law, you may find this will work itself out without a tremendous amount of governmental intervention.

Mr. TAUZIN. You see the problem, though, Senator Boren, is that we have laid down a whole series of laws that are pipe specific.

Mr. BOREN. Right.

Mr. TAUZIN. That we designed to try to create parity of stream but in different ways for different pipes, and in our best sense of fairness, we not only encourage new entrants into the marketplace but give them a head start as we did with the satellites, delaying the day for must-carry and what have you.

We have created all these different sets of laws designed for different pipes. We defined them differently. Some are telecommunications carries and some are not, and yet they will all be doing the same thing pretty soon, using the same kind of broad band digital systems to do it, and consumers, I assume some day will not care too much how it gets there just so long as they can get to everything they want and somehow have a choice among providers so that they do not have to count on us to regulate prices and terms and conditions of service, and if that is true, if we are moving in that direction, if 10-minute caps that cable put on video stream are not going to hold in that world, how do we somehow let all that happen and at the same time have all these old laws on the books that define content and carriage and rights of carry.

I mean, in the telephone world we still have a massive defining when a distance call becomes issue and is incredibly relevant in Internet, and certainly in broad global Internet traffic. What I'm saying is I hear you saying you do not have to do anything, the laws are fine, the market is going to work, but I'm looking at the laws we have on the books, and I am saying wait a minute, they're pretty archaic. They're pretty out of date, and they are becoming more outdated every day, and while you struggle to find market solutions, maybe our policy needs to keep abreast of those changes in the marketplace and maybe we need to be thinking now how we settle those tensions that exist among Americans such as the tension between wanting to maintain localism and at the same time

wanting to be able to reach out and acquire any signal, any program from anywhere and enjoy it.

Can we maintain some of those systems, those old laws? Do they make any sense anymore? I would appreciate, frankly, if you would just think that through a little bit and respond back to us with perhaps some additional writings and some offerings.

Mr. Roback, I have not heard you in a while. Can you feed back to me just a bit? Am I right about that? I mean music videos is not where you're going to stop, I assume. Your company is probably going to want the expand into all forms of video, and as broad band services are allowing you to do it, where are you taking it?

Mr. ROBACK. Yes. First of all, I completely agree with you about needing to recognize a change and start to treat things equally. I think the biggest thing that you also always have to look at in the Internet space is that the consumer is more in control than they have ever been before and preserving a lot of the things that we have talked about today, I mean certainly we are in complete agreement with the need to protect the intellectual property and making sure that the intellectual property holder is compensated, but for issues like localism and diversity and competition, I think really the Internet breeds exactly that.

You put yourself in a box where, I mean, we have talked a little bit today, about some of the geographic guidelines, for example, that have been drawn which really suggest that people need to be protected and that they're anointed with the opportunity to have advertising revenue in a local market, and I would argue that the advertising benefits should really accrue to the people that are delivering the best programming and therefore attracting the best audience for whoever that advertiser that's willing to pay, and so by opening up the playing field and allowing there to be more providers of whether it be local content or any content to the consumer who cares, we are going to end up with higher quality contents, and we're going to end up with whether it be web site or channels that prevail around things that really are things that the consumer wants.

And we have seen that in a number of different categories, music in particular, where the consumer is gravitating toward exactly those things they cannot find elsewhere, the things that they really crave, and that is what has been our opportunity in the music space, and I think we will translate, you know, as we open up more of these opportunities as well.

Mr. TAUZIN. I will stop just a second and acknowledge that several of our witnesses had plane schedules, and I will try to accommodate them, and we thank them privately for their appearance today.

My time is up, but I will allow any of you to respond and then I will move to Mr. Markey.

Mr. KARPOWICZ. Yes, Mr. Chairman, I would just say that to your point about the other distribution systems, each of those distribution systems that you have described does have a component of geography, and, again, as a local broadcaster, I have to continue to go back to my basic tenet that if we do not protect the local market, we really cut away at the foundation of our system, and if we are not able to control what happens to our signal in our local mar-

ketplace fundamentally, the very fragile network affiliate studio system dissolves completely.

So to the education at the present time, the technology does not exist today to limit the Internet access to my specific market. That is why we have a problem. Now, if, in fact, that technology changes down the road, and certainly there is very real possibility, at that point, I think we are highly receptive to having those discussions.

Mr. TAUZIN. Mr. Jaszi.

Mr. JASZI. I just wanted to say that in my view, the history genius of American copyright law is this it is not and has not been technological specific, and to an extent Section 111 and Section 119, as they now exist in the act, derogate from that general and I think very salutary basic copyright principle.

The other thing that is true about the history of copyright law, especially in the last 25 years, is that it has been marked by a very strong degree of convergence, not only nationally but increasingly internationally, and so it seems to me nearly inevitable that the kind of legal and policy convergence that you foresee as the consequence of technological convergence will, must, should come about, but I would say one thing about the form that that convergent mode of regulation might take, and that is I think that we have sometimes today been working with what I regard as a false opposition, that is an opposition between a system based on principles of compulsory licensing on the one hand and a system based on freely negotiated market mechanisms on the other hand.

The fact of the matter is that historically, at least, what we have seen in copyright law is mixed systems which accommodate elements of statutory licensing and elements of free market negotiated licenses. The system business which music is authorized for—sound recordings is a good example, although if Section 115 in the statutory license still operates, many sound recordings are now prepared under negotiated arrangements between copyright owners and recording companies.

It's a mixed model. It has evolved as a mixed model. It is stable and it works well. I see no reason to see that the mixed model could not be the solution to this convergent regulation of the delivery of video services that you describe.

Mr. ALBEN. Mr. Chairman, it is true the Internet is forcing us to rethink old models. The model of cable compulsory license is a problem which was that there were some local areas where you would not get the local terrestrial signal, and then the satellite license adds another layer of complexity on top of that, and I think when you look at the Internet, it is very appropriate to pause and think about how these policies all work together, and I think the best thing might be to look at—go back to the first principles.

What was the first principle of granting that broadcast license under the, you know, by the FCC? It was you were going to encourage local broadcasting and protect local markets for public service. We are not just talking about, you know, city-wide type broadcasting. My daughter's YMCA Indian Princess group has their own web site, and they will be broadcasting 1 day, and the soccer club has their own web site. So all of a sudden when you have been spending 30 or 40 years regulating to promote localism,

here comes a medium that is so local you cannot get more granular.

Each one of us at this table could put this testimony up, and we could add commentary and we could have the ideal local broadcasting. So maybe it is time, and I say this very hesitatingly, to rethink local protections because local content is strong. There is market for local content. No one can do what the Buffalo station does better than the Buffalo station. They are there. They know the community. They have made the investment, and I think that when you think through these policies, we have to look at our first principles again.

Mr. KARPOWICZ. Could I add one of those other first principles is free over-the-air availability of television service for everyone, and we want to be able to continue to provide that, and we want to be able to maintain our marketplace so that we can continue to provide that. So I think that is a principle that we do not want to get too far away from.

Mr. TAUZIN. Thank you very much.

The Chair would like to acknowledge that if any of the other witnesses need to be temporarily excused to catch a quick plane and return, you are also welcome to do so.

Mr. Markey is recognized.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

To quote another speaker of the House, Tip O'Neal, his most important aphorism was "all politics are local". Well, what we tried to do last year and is already a success in the marketplace is that we took the satellite industry and we transformed it by saying all politics is local into local.

You can take this local TV station, beam it up to some satellite and then beam it right back down again and create new competition. Here with the Internet, what we have is this mixture of global localism. Every local site is also a global site simultaneously by definition, and so that creates a whole series of issues that have to be resolved. None of them are unsolvable, but there is no one simple template that you can use anymore than when used in any other area of jurisdiction that this committee has had to deal with.

We work it through. We try to be fair. We want to encourage technology and competition. This committee is the not the Judiciary Copyright Subcommittee. We have a slightly different agenda, but we think that they can be harmonized. If we listen to witnesses from the entertainment broadcast industry back in the fifties and sixties and seventies, we would not have much of a technological revolution which we have today. We just would not have had it because they would have stopped it dead in its tracks.

They would go back in a time capsule now, many of them if they could to the good ole days of three TV stations and no cable and no satellite because they had total control. So that is a balance that we have, and we deal with the internal contradictions, by the way, of broadcasters even, that maybe they want to broadcast, webcast local programs today but want to maintain exclusivity on programming.

Perhaps up in Seattle, perhaps, you know, you want to broadcast this Seattle Mariners across the country, but on the other hand, the Seattle Mariners say keep that antitrust law in place, we do

not want my new baseball teams. So that the very same people that are investing in the Seattle Mariners saying, no, we want antitrust protection, no competition for baseball, but yet say would not it be great if everyone was free to have their own little local webcast, broadcast station across the station.

So you wide up with this set of contradictions. Everyone has kind of a narrow perspective when it comes to their own little internal monopoly, but when it comes to somebody else's monopoly, they are more than willing to provide all the competition in the world to that monopoly. And that is just a duality of it all, and we have to deal with that here.

And as Tip used to say, Everyone likes to be asked. So we appreciate you coming to us and asking because that helps us to get into this discussion in a way that is going the ultimately, I think, result in a proper balance being struck.

So I thank you, Mr. Chairman. I think that we have the future sitting in front of us today. I think that 10 years from now, to put on my binoculars, we are going to have a transformed marketplace, and I will be able to see the Red Sox here in Washington. I will probably have to pay some fee for it, rather, to make it marketable.

I think that Mr. Karpowicz is right about his ability to control his Buffalo station, but I personally believe that if Doug Flute was quarterbacking in some game, even if it was a shakey picture and it was only five inches in diameter and someone was in Oklahoma, that they would take that as the highest quality service that technology ever delivered to a human being who comes to Buffalo.

So I think that there is going to be attention here. Each of you desire to maintain the perfection of the original product which you have been able to create, and on the other hand the ability of technology to deliver that product in some imperfect form across the country, and we want to make sure, however, that the old is not destroyed by the new but rather it coexists with the new, and we believe that that kind of compatibility is possible, and if we work together, we will be able to achieve that.

So I thank each of you. It has been highly illuminating. You have given us a window onto the future, and I think that if we work together, we can instruct a new regulatory and legal frame work that allows all of you to come back here 10 years from today great successes in this new universe.

Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman for his comments and his insight.

Let me conclude by going back do where we started, and that is an examination of the policy and technological challenges that you presented to us today, I think would be incomplete if we do not also look at the other side of the mirror at the consumer, and the consumer's role in this evolving complex of issues, and the consumer role is going to be in large measure determined by what kind of privacy policy is made in the marketplace and here in Washington.

My friend, Mr. Markey has been a strong advocate of consumer privacy rights for a long time and privacy rights causes being formed. I intend to establish a privacy task force of this sub-committee to begin examining that particular element of our role,

our policymaking role in this area, and we will ask your help and advice in terms of where we should take it.

We will do that in is another hearing where I will ask you to be thinking on how you might be able to contribute to that process. The concept will literally turn on the question of how the consumer's control or lack of control of the flow of information about the consumer, his location, his identity, his likes, his dislikes, what he browses on the Internet or what he browses in a store, albeit a virtual reality store, how that information is or is not available to this system and how it works with controls that some of you are talking about today in terms of technologically defining the recipient of some of this content.

There were several television shows just recently exploring the concept of the cookie that is built into most software and most of our personal computers. This allows the person to track our movements over the web, and it demonstrated the consumers how they might disable that cookie, and I would be very surprised to learn that most Americans know that there is the capacity in their computers for others to track all their moves.

So what I would also be concerned about is that once all Americans knew they could simply disable it and shut off the flow of information, they probably will choose to do so and to use the cookie cutter, in fact, and we are going to have to think about what kind of policy we ought to make to give consumers the rights to control the flow of information about sensitive and personal investigation and yet at the same time not put them in the spot where they have got to shut off everything, and that is going to be critical to the movement of video programs and to advertiser-based video programming in the Internet world.

So I would urge you to be thinking of that and to think about what contributions you might make in a future hearing on that issue as well.

Mr. Markey suggests, and I think it is a good suggestion, that I ask each of you to use a minute of time, if you do not mind, in giving us a summary of what you would like us to remember from this hearing today. What do you want to leave us with? One minute apiece starting with you, Mr. Karpowicz.

Mr. KARPOWICZ. I think, Mr. Chairman, that what will I leave you with today is simply that we have to protect local television station's ability to maintain a discreet marketplace and that any distribution system that threatens that and that can take other product and distribute beyond our market area, certainly without our knowledge or without our approval, is very disruptive to the very fabric of the relationship that exists today between networks, affiliates, studios and content providers.

Mr. TAUZIN. Mr. Alben.

Mr. ALBEN. I think that we want to thank the committee for involving us in this debate because this is the first time we have ever testified before a Congressional subcommittee.

Mr. TAUZIN. Thanks for coming.

Mr. ALBEN. We think that the Internet is doing fine, the market is evolving. I think people have prudently stated that we need to wait a minute before we overreact on what we do not understand, and I do not think there is a need to change the compulsory license

laws at this time, but I do think that we should continue to resist efforts, as they were in the last session, to erect some laws or language in laws that specifically said that you could not have digital performance rights, that you could not have a digital right to transmit programming. That is equally not a good idea, and I think that we are going to work as we have worked with the 300 content partners that we have now to license programming.

Would we like a compulsory license down the road? Sure we would, because I think that would facilitate the transmission of programming to consumers.

Mr. TAUZIN. Mr. Boren?

Mr. BOREN. Well, I would just say that the colleges and universities certainly welcome the opportunity for broader distribution of our sports programming as we do with many other educational funds, but we hope the committee will remember as this goes forward to do it in a way that will not destroy our ability to negotiate in the marketplace for a revenue stream that is absolutely essential to intercollegiate athletics. Otherwise, if that revenue stream dries up, many colleges and universities are simply going to have to greatly reduce those athletic opportunities for our student athletes, reduce the financial support, be faced with the choice between men's and women's athletics and also between academic programs and athletic participation in a way that is really going to end up hurting a lot of young people across the country. So we hope you would keep that in mind.

Mr. TAUZIN. Mr. McCallum.

Mr. MCCALLUM. First and foremost, Mr. Chairman, I would like to thank you very much for inviting us to come and speak and be part of these discussions. I think if I would like to leave a message, first and foremost, is that we are legal in Canada. We operate, fortunately, within a regime that has enabled us, under the circumstances, to operate in that fashion. There are is still some housekeeping that is being tidied up in the nature of the tariff and so on, but we have, in fact, operated that way and intend to be that way.

We are developing a security system which does enable us and will enable others to define territories. At this point, we are looking on the national basis. Whether it could be done on a local basis or not will require some additional examination.

You, as we were are, facing the reality that we are dealing in Internet time, not regulatory time, and I think the deliberations that you are going through have to be somewhat accelerated, bearing in mind the interest of all the parties, specifically the copyright holders, and as the—I think it was Ms. McCarthy mentioned, not leaving out the creators, the performers, the writers, the musicians as part of that process.

So we wish shall you God speed, and we will look forward and look on your discussing things with great interest. Thank you.

Mr. TAUZIN. Mr. Jaszi.

Mr. JASZI. Mr. Chairman, I hardly need to remind this subcommittee that balancing the copyright system is one that takes appropriate account of the interests of consumers and access as well as the interest of owners and proprietary control. Historically, compulsory licenses has been one mechanism that has been used

in moments of technological stress when that balance has been lessened by the response of content proprietors to new technologies, and I think, therefore, that is an option that has to remain in the mix that the subcommittee and the Congress consider as they take account of the converging phenomenon on television service delivery by means of the Internet and equivalent technologies.

I guess the last point I would add is that it seems to me that when all is said and done, what we are likely to have for cable, for satellite, and for Internet is a mixed model for the authorization of retransmission, a model that has some compulsory licensing features with many free market features.

Mr. TAUZIN. Mr. Beck.

Mr. BECK. Mr. Chairman, it has been gratifying to hear so many of your colleagues and you, yourself, say that you have often wanted affiliate television right here in Washington from your Districts. We did that. We brought our resources together. We pay the photographers. We pay the camera men. We even pay for the streaming to companies like his companies down there.

So we are thrilled to be operating in this new environment, repurposing our content to make your lives hopefully a little bit better when you want to learn about your Districts. I think things are working fine. Just prevent the pirates from stealing our products and punish where it is appropriate, and we will do just fine.

We are not an old business. We are as new as anybody else. We think we are doing a fine job of competing in this new space. Please let us do that.

Mr. TAUZIN. Mr. Roback.

Mr. ROBACK. Thank you. I guess I would just like to say that for every bad mark like something that has happened in this iCraveTV incident, I would like you all to know that there will be a lot of Internet companies like ours and the other members of if Digital Media Association that Alex mentioned that are going and licensing content appropriately, providing value to both sides of an equation by expanding the marketing and distribution for a lot of this value content and still compensating rights holders for use of that content.

The second thing I would like to say is that I think we all have to be mindful, as I mentioned earlier, of the fact that the consumer will be the final arbiter of what works on the net, what works generally when it comes to how they receive content and what content, frankly, is successful. If local content continues to be something that people demand, it will be out there, and it will be the best because there will be so much competition.

I think we should just be mindful of the fact that at the end of the day, the consumer has the final say.

Mr. TAUZIN. And that will be the final say.

Gentlemen, again, thank you very much for your testimony. The record will remain open for 30 days, and I have invited you to supplement it. I wish you would, and we will look forward to hearing your comments also on the privacy issue when we do arrive at one.

Thank you very much. The hearing stands adjourned.

[Whereupon, at 1:23 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF HON. ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF NEW YORK

Mr. Chairman, please accept my gratitude for scheduling this hearing today. It is timely and foreshadows the future of what television programming Americans will receive and how they will receive it.

With increasing deployment of broadband internet access, more and more Americans will be able to enjoy close to video-quality reception on their computer. The boundaries and rules for who can distribute programming and the arrangements for distribution are at the heart of this hearing. On the one hand, a representative of "iCraveTV", which exceeded the boundaries of copyright protection, is testifying. "iCraveTV" rebroadcast signals of a U.S. TV station without a licensing arrangement to fairly compensate the owners of copyrighted content. This was wrong and seriously infringed on the intellectual property rights of the content owners.

"iCraveTV's" infringements have only emphasized the bright line beyond which e-business should not stray. In addition, though, by showing what a webcasting company shouldn't do, "iCraveTV" has helped to spotlight the actions of the many webcasters who play by the rules and distribute content only under license.

I am, indeed, optimistic as I look forward to today's hearing because I believe that the content industry and the streaming media community may actually move closer together as the internet becomes an increasingly important tool for distribution of music, television, sports, and other creative works.

As I preview the statements of my friend, Jack Valenti, of the Motion Picture Association of America, and Alex Alben, of RealNetworks, with whom I met yesterday, I am struck by the convergence of elements of their testimony. Jack Valenti is proud to "embrace new Internet opportunities for consumers...licensing our creative material to Internet companies." Likewise Alex Alben says, "By offering the online audience the widest possible array of live on-demand programming, we will work with content producers to create a huge new market for new and old copyrighted works."

Thus, Mr. Chairman, I am grateful you have scheduled this hearing today and look forward to exploring whether internet companies should be given a so-called compulsory license and how copyrighted music, TV, sports, and other media will be distributed on the internet in the future.

PREPARED STATEMENT OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND
PUBLISHERS

The American Society of Composers, Authors and Publishers (ASCAP) submits this statement concerning the question of compulsory licensing of copyrighted works used by webcasters.

ASCAP is an unincorporated membership association of over 90,000 American composers, lyricists and music publishers. These writer and publisher members, who are the creators and the copyright owners of millions of copyrighted musical compositions, give ASCAP the nonexclusive right to license the nondramatic public performance of their music. ASCAP thus licenses many different types of music users, including radio and television broadcast stations and networks, cable program services and systems, concert promoters, hotels and motels, bars, grills, restaurants and nightclubs, and, increasingly over the last five years, Internet websites, including webcasters. ASCAP's license are *blanket* licenses, in that they give access to, and the user may perform, any and all works in the ASCAP repertory. Further, music users are guaranteed that ASCAP will license them at reasonable fees, and have recourse to have a federal court set license fees if they believe ASCAP's offers are unreasonable.

ASCAP strongly opposes the enactment of any new compulsory licenses for webcasters, for many reasons:

First, insofar as music is concerned, any webcaster can obtain all necessary performance rights in copyrighted musical compositions it is transmitting, by obtaining a license from ASCAP (and the two other American performing rights organizations). As ASCAP cannot deny that license, as it must be at a reasonable license fee, and as it covers all the music in the ASCAP repertory, webcasters are assured that they can get all the rights that they need. Further, pursuant to the amendments to the Performance Rights in Sound Recordings Act of 1995 made by the Digital Millennium Copyright Act of 1998, webcasters have a statutory license for the performing rights in the sound recordings that they perform as well, and hence have all the rights they need.

As for any other compulsion to allow the use of the property of others, the basic principles of our free enterprise system make the thought abhorrent. We believe, as we trust and believe Congress does as well, in the sanctity of private property. The

fact is that intellectual property is no different from tangible property in this regard. The product of a person's mind is as much property as the product of a person's hands. The law should protect both equally. Webcasters do not obtain any other property they use on a compulsory basis. And the fact that they need intellectual property to provide service does not change that basic principle, for they need tangible property to provide their services as well. Thus, for example, a webcaster cannot operate without a computer. The law does not, and should not, *require* IBM or Apple to provide computers to webcasters (let alone at a price that is not determined in the free marketplace). The same holds true for copyrighted property.

We appreciate the opportunity to share our views with the Committee, and stand ready to help further in any way we can.