

Consumer Electronics Association

IEEE-USA

NetCoalition

October 6, 2004

The Honorable Orrin G. Hatch
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Minority Member
Senate Committee on the Judiciary
152 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Hatch and Senator Leahy:

At the July 22 hearing, we committed to working with you to craft a legislative alternative to S. 2560. At Chairman Hatch's direction, we have been working virtually around the clock for almost a week in an effort to reach consensus with the copyright community. Notwithstanding everyone's hard work and good intentions, we find ourselves farther apart now than at the outset of this process. Because we are attempting to write legislation dealing with complex and evolving technology, this has proven to be an exceptionally difficult process.

Unfortunately, the recording industry continues to propose language that would not solve the piracy problems in the manner you identified, but instead would effectively put at risk all consumer electronics, information technology products, and Internet products and services that aren't designed to the industry's liking. In fact, the most recent draft put forward by the recording industry at 1:00 am this morning is a large step backwards from previous drafts in that it would jeopardize more legitimate products and would create a flood of litigation, and thus would hurt vital sectors of the U.S. economy. In short, the draft is unacceptable.

In your letter to the Register of Copyrights, you expressed interest in a "technology-neutral law directed at a small set of bad actors while protecting our legitimate technology industries from frivolous litigation." At this Committee's request, three alternatives were provided by the undersigned associations that would address the kind of mass, indiscriminate infringing conduct at the heart of the piracy problem, while preserving the Supreme Court's Betamax decision. As you know, we consider that decision the Magna Carta of the technology industry and it is in no small measure responsible for our nation's preeminence in technological innovation and entrepreneurship. The latest draft put forward by the recording industry would undermine the Betamax decision with respect to the most vital and innovative sectors of the Information Economy.

Notwithstanding the fact that the parties are so far away from reaching consensus on the most fundamental aspects of a bill, we understand that some version of S. 2560 is still scheduled to be marked up before the Senate adjourns at the end of this week.

We very much appreciate your efforts and those of your staff over the past week to achieve the goal you established. We wish to reemphasize that we remain committed to working with you to enact a "technology-neutral law directed at a small set of bad actors while

protecting our legitimate technology industries from frivolous litigation." The current recording industry draft does none of this. It is not technology neutral, is widely overbroad in scope, and will chill innovation in a critical marketplace.

We must therefore oppose a bill that fails to meet your criteria. Given that the Senate will be in session in November, we urge you not to move forward now with S. 2560 and urge you instead to encourage content owners to address your stated intent and focus on bad actors rather than legitimate technologies that are of great value to the consuming public.

Sincerely,

Gary Shapiro
CEA

John W. Steadman, Ph.D, P.E.
IEEE-USA

Kevin S. McGuinness
NetCoalition

cc: The Honorable Bill Frist
The Honorable Tom Daschle
The Senate Judiciary Committee