

**Testimony of
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**Before the Committee on Foreign Affairs
U.S. House of Representatives
Van Nuys, California
April 6, 2009**

Mr. Chairman, thank you for convening this hearing today and inviting me to participate.

No issue is more important to The Walt Disney Studios than the protection of intellectual property. Intellectual property – products of the imagination brought to life in stories told and captured on film – is the core of our business. The ability to protect that intellectual property is what drives our ability to continue investing in new creativity, to tell new stories and to innovate in new ways to speak to the imagination of those who view our films. It is what allows more than 1.3 million U.S. workers to come to work each day and apply their skills and creativity in the American film and television production industry. Yet as Jack Valenti was known to say, “If you can’t protect what you own, you don’t own anything.” This is a sobering reality, and I commend you, Mr. Chairman, for focusing the attention of the Foreign Affairs Committee on how to ensure that intellectual property remains protected in an increasingly complex global environment.

These are challenging times for the entertainment industry, both in terms of the impact of the global economy and the fundamental changes occurring in the ways in which consumers interact with and consume entertainment media. Movie studios, like other companies, have had to make difficult choices in the face of tough economic conditions. Yet the motion picture industry maintains its great promise as a truly unique American industry with a strong history of creating quality, high-paying jobs and economic benefits throughout the United States. A single motion picture production will employ hundreds of people and contribute hundreds of thousands of dollars per day to the local economy. Overall the industry generates some \$30 billion in wages each year for more than a million U.S. workers. And we maintain a positive balance of trade around the world, with an annual trade surplus in excess of \$9 billion. Now, more than ever, we should be encouraging policies that promote investment in this kind of creativity. As our Founding Fathers recognized, the most effective of all such policies is the encouragement of authorship and innovation through the protection of intellectual property.

Beyond changes in the economy, digital technologies have changed the way consumers view and interact with our products. Disney has been a leader in meeting these challenges, being mindful of change and mindful of the price-to-value relationships that we offer. We have taken the view that the best way to meet these challenges, is to make our products readily available through legitimate means on a well-timed, well-priced basis. And we are doing that. We were the first studio to offer full-length feature films

for downloads on iTunes. We were the first studio to offer online movie rentals “day and date” with the DVD release. And we continue to innovate new ways to provide consumers access to our products, when and where they want.

Just as digital technologies have changed consumers’ media consumption habits, digital technologies have also changed the nature of the challenges we face from piracy. Gone are the days when borders provided a significant barrier to trafficking in pirated goods. In fact, gone are the days when pirated goods necessarily take the form of physical goods at all. No longer do we live in a world where piracy and counterfeiting activities are confined to a small number of sophisticated and large-scale syndicates, though those certainly continue to exist. Today the actions of a single individual with consumer grade tools can feed an entire chain of physical and Internet piracy. And most importantly, what happens in one country now has a profound impact on businesses in other countries.

On the positive side, many countries are coming to recognize that providing meaningful legal protections for intellectual property and the effective enforcement of those laws fosters an environment in which authorship and innovation are encouraged. With that sort of environment comes trust among trading partners and prosperity. The principles that underlie the value of protecting creative output and the benefits that flow from them are universally applicable. Just as the protection of intellectual property has served as an engine of economic growth and prosperity in the United States, the same principles offer incentives for growth in creativity, innovation, and economic prosperity in countries around the world. This reality should create an atmosphere of shared objectives and cooperation in our relations with our trading partners. Significant achievements have resulted through bilateral and multi-lateral discussions in the recent past. But more can and must be done to meet these new challenges.

Let me share with you an example that will demonstrate the complexity and the international scope of the piracy challenges we face. Last year we released a wonderful Disney-Pixar film named Wall-E, which won the Academy Award for Best Animated Film. The film was released in theaters in the United States on June 27. It was released in the Ukraine a week later on July 3. On July 5, a copy of the movie made by an individual operating a camcorder in a theater appeared on a Russian Internet site. Using commonly applied forensics we were able to trace that camcordered copy to a theater in Kiev, Ukraine. Two days later, on July 7, copies of the same camcordered version appeared for the first time on an Internet peer-to-peer site. Within seven days of the first copy appearing on the Internet, copies of the same camcordered version were uploaded on thirteen other Internet sites. Within ten days of the film’s Ukrainian theatrical release there were copies online in five different languages (including Russian, English, Spanish, Dutch and Mandarin). Within 30 days there were copies in 10 different languages.

The reach of this single Ukrainian camcord was not limited to Internet distribution. The same camcordered copy served as the “master” for physical copies worldwide. The first “hard good” copy of the camcordered version was found on July 6 in Kiev, and a second copy was purchased in Chicago on July 7, only two days after it first appeared on the Internet. Subsequent copies of the same version were purchased in Lima, Peru on July 8,

and in Guadalajara, Mexico and New York City on July 15. By July 31, just 28 days after theatrical release in Ukraine, “hard good” copies of this same version were purchased in Argentina, Indonesia, Philippines, UK, China, Canada, Turkey, Hungary, Japan, Russia, Chile, Australia and Brazil. In total, 54 “hard good” purchases were made in cities around the world all sourced from the same camcorded version of the film.

The problem of camcording is a major concern to Disney and to the motion picture industry generally. With the increased availability of high-definition camcorders at ever-decreasing prices, a camcorded copy of a movie can be near-DVD quality, with perfect audio recorded from sound jacks intended for use by hearing-impaired theater patrons. Typically camcording is conducted by organized criminal groups, or in some cases criminal-minded individuals, who then sell their illicit copies to other groups in a chain that leads to these copies making their way to the streets and to the Internet. Today, worldwide more than 90 percent of counterfeit recently released movies on DVDs can be sourced to illegal camcording.

But camcording is a good example of where the combined efforts of industry and government can make a difference. In 2003, Mr. Chairman, you joined with then Chairman Smith in the House, and Senators Feinstein and Cornyn in the Senate, to introduce legislation to address the serious problem of illegal camcording in that United States. That legislation made it a federal crime, punishable by jail time and fines, to use an audiovisual recording device to transmit or make a copy of a copyrighted motion picture from a performance in a motion picture exhibition facility. That bill was enacted into law, as you know, as part of the Family and Education Copyright Act of 2005. This federal bill operates alongside anti-camcording laws in a majority of states.

The impact of this kind of legislation on the camcording problem in the United States has been dramatic. New York has been one of the centers of illegal camcording activity. In 2004, there were 113 camcorded copies of films traced to theaters in New York. In 2008, there were 9. In all 50 states put together, the number of camcorded copies traced to domestic theaters was down by almost a third from the number in 2004. The effectiveness of these laws has been amplified by a commitment on the part of law enforcement to enforce them. For example, last year an active camcorder in the Washington D.C. area was sentenced to 21 months in prison in connection with a guilty plea to two counts of violating the federal anti-camcording law. This is not to suggest that camcording does not remain a problem in the United States. But certainly the actions by Congress and by law enforcement, coupled with increased security measures taken by the studios, have made a measurable impact on this problem in the United States.

This is by no means the end of the story, however. Camcording is very much an international problem. When we began to see camcording activity decrease in the United States we noticed that such activity was increasing elsewhere, particularly in Canada. Lack of an effective Canadian legal framework to deal with this problem led to Canada becoming a major source of illegal camcording. In fact, between 2005 and 2006 Canadian-source camcorded copies rose by some 24 percent. After consultations with the Canadian government, including cooperative engagement between the U.S. and

Canadian governments, Canada enacted its own legislation to address the camcording problem in 2007. Since then there have been several arrests made and just this year an individual from Montreal was convicted under the new camcording law. Early returns show some promise, with identified Canadian source camcorded copies falling from 115 in 2007 to 66 last year.

As might be expected, however, effective legislation and enforcement is starting to push this activity elsewhere. Countries without effective camcording legislation, such as Ukraine, the Philippines, Thailand, and Mexico have increasingly become havens for illegal camcording operations. The increase in illegal activity in these countries has been dramatic and there is an urgent need for action.

But for there to be an effective solution to this problem, there must be effective international response. The U.S. Government has succeeded in securing commitments in this area in recent free trade agreements with South Korea and Malaysia. I would strongly encourage these provisions to be looked to as model provisions in future FTAs. Similarly, the U.S. Government should make effective legal protections against illegal camcording a priority in bilateral and multilateral discussions and in Special 301 determinations. This is an area where we know we can make a difference. But it will take joint efforts of industry and government on an international scale to make it work.

There are other manifestations of technological development that enable widespread and incredibly swift distribution of content that demand attention if piracy is going to be addressed in a meaningful way. While in some cases government action may prove necessary, there is some hope that in at least some areas inter-industry cooperation can produce results. A case in point is Internet piracy on user generated content (UGC) sites.

In just a few short years we have seen an unprecedented growth in UGC sites and services. And while these sites offered the potential for the distribution of creative and truly original content, they quickly became a preferred and easy means of distribution of and access to infringing film and television content. We decided that rather than resort to litigation or legislation as our first response, we would try to engage a number of these sites directly in an effort to find a mutually agreeable solution to the rampant piracy occurring on these sites. What came out of those discussions was a set of Principles for User Generated Content Services agreed to by a number of major content providers and UGC services. At the heart of these principles is a shared commitment to the goal of eliminating infringement on these sites, including through the use of state-of-the-art filtering technology, while also protecting fair use and the promotion of original and authorized user-generated content. Those principles have now been joined by twelve companies in the U.S. and in Europe, and the result has been a substantial reduction in piracy on participating UGC sites.

But as with the camcording problem, the problem of infringement on UGC sites is an international one. Infringing activity has moved from those sites that are implementing effective filtering technologies to those that do not. And unsurprisingly, many of those sites are located overseas. So as with camcording, a meaningful long-term solution must

be an international one. As we engage with UGC sites both domestically and around the world, we continue to advocate a constructive solution along the lines of the one embodied in the UGC Principles. We would strongly encourage the U.S. Government to promote similarly effective inter-industry solutions here and in its interactions abroad.

Mr. Chairman, it is clear that the problems facing us are complex and far reaching. While too often borders remain impediments to legitimate trade, they are increasingly irrelevant to illicit trade. A single infringing copy of a movie sourced in one country and placed on the Internet will be translated into mass distribution of counterfeit DVDs in markets across the world within hours. The anonymity afforded by the Internet, coupled with the ability to evade detection through the use of mail to traffic in small quantities of counterfeit product delivered direct to consumers or wholesalers, render this model exceedingly low-risk for counterfeiters. And when it comes to Internet piracy, few if any borders remain. As readily available online sources of pirated goods combines with escalating broadband capacity in some markets, as we are seeing in Korea, the problem of Internet piracy can become so pervasive as to eliminate entire legitimate markets. We need creative and effective solutions, and any truly effective solutions must be international ones.

I also want to note that while our problems with piracy and counterfeiting abroad remain significant, we continue to face very serious threats right here at home. The fact remains that U.S. studios lose more revenue to piracy occurring over broadband networks in this country than they do to piracy in countries abroad, like China, Russia and Thailand, where piracy rates run between 75 and 90 percent. This is an area, Mr. Chairman, to which you have devoted substantial attention, for which you deserve a great amount of credit, and to which we must continue to devote our energy and attention. I thank you for your thoughtfulness in this area and look forward to working with you in a constructive effort to find solutions to these very serious issues both at home and abroad.

Thank you again for inviting me to appear before you today.