

FIFTH ANNUAL
CATO INSTITUTE/FORBES ASAP
TECHNOLOGY & SOCIETY CONFERENCE

THE FUTURE OF INTELLECTUAL PROPERTY
IN THE INFORMATION AGE

Saturday, November 14, 2001

MORNING KEYNOTE ADDRESS

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The Cato Institute
F.A. Hayek Auditorium
Washington, D.C.

P R O C E E D I N G S

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REP. BOUCHER: Patrick, thank you very much.

It's a privilege for me to have this opportunity to spend some time today talking with you about the subject of intellectual property and the information age. And I want to say at the outset that it is truly commendable for Cato and Forbes ASAP to sponsor this annual forum about technology and society. These are among the most important issues that I think policymakers have to address. And it is to the credit of both organizations that you are helping to develop a body of information and hopefully, at some point, a consensus on how we can proceed to write good laws with regard to these challenging subjects.

Intellectual property has deep roots in our law and, in fact, the United States Constitution expressly confers upon the Congress authority to adopt laws that will protect intellectual property rights for a reasonable period of time in order to encourage science and the useful arts. And from the very earliest days of this nation creative works have enjoyed Federal law protection in recognition of the need to assure appropriate

compensation to inventors, to writers, and to artists when the product of their creativity is commercialized.

There has always been in our country a broad agreement that the law should recognize the rights of creators of intellectual property as an incentive to further original work creation. And I share that belief. I am a very strong defender of intellectual property and the rights of companies that have created works, individuals that have created works, to receive fair compensation through the ability to limit the use of that work in exchange for compensation for a limited period of time.

And I think we also would all broadly acknowledge the tremendous benefits that American ingenuity, from inventions to literature, to recorded music, to motion pictures that are made in this country, have conferred upon the American economy. These benefits are self-evident and they are broadly acknowledged.

I would also say that only through the compensation assurance that is provided by intellectual property laws can we expect these economic benefits to continue. And so nowhere in the debate that I am going to address in a moment is there the slightest notion that intellectual property laws are not valuable. We have to begin the conversation by acknowledging that they are.

But American law has also historically contained a recognition of the rights of the users of intellectual property.

When you whistle in the shower, when you sing a line from a romantic song to your husband or wife, girlfriend or boyfriend, you don't have to call the composer in order to get permission in advance. The student at a public library doesn't have to get permission from the author of a book in order to make a copy on a photocopier of the one page from that book that the student needs to quote from in order to finish his term paper. These everyday uses of copyrighted works are permitted to users under our classic fair use doctrine, which enables reasonable use and copying of protected works for personal convenience.

The fair use doctrine keeps intellectual property laws in check. While acknowledging that creators of works should be reasonably compensated for commercial uses of their works, it keeps them from having monopoly control. Courts in the United States created the fair use doctrine. It is a doctrine of longstanding. It was created by the courts as a way to give substance to First Amendment free speech rights.

Put simply, free speech doesn't mean very much if you have to get the prior permission of an intellectual property owner to use words in a series that may have appeared, perhaps coincidentally, in some copyrighted work. And so the fair use doctrine was essential in the view of our American courts in order to give vitality to our precious freedom of speech.

It is the fair use doctrine that allows society to have an active discourse, while at the same time granting compensation rights to authors and artists. It is the oil that keeps the machine from seizing up. But the precious fair use right is under attack today as never before. And on other fronts the traditional balance between the rights of the creators of intellectual property and the users of intellectual property is being recast in favor of creators in a manner that, if not checked, will fundamentally change the way that information is used in our society.

I am concerned about a number of recent events, and I'll take a moment this morning to share those specific concerns with you. Let me begin with the Digital Millennium Copyright Act. This legislation, which we all refer to as the DMCA, was enacted by Congress in 1988 largely at the behest of America's creative community. It was the implementation in the United States of the World Intellectual Property Organization Treaty that a number of nations signed in 1996. It is, in my humble opinion, a broad overreach which severely limits fair use rights.

The Motion Picture Association, the Recording Industry Association of America, book publishers, and others representing content owners in the United States, made an appealing claim when they came to Congress, first in 1997, and suggested that the DMCA be adopted. They said that the roughly simultaneous arrival of

digital technology and the Internet created twin threats of broadly expanded piracy of protected works. They claimed that with digital technology, a copy of a copy of a copy retains the same clarity and integrity as the original of the work, and that digital technology differs dramatically from analog technology, where each succeeding copy of the work degrades in quality. And this is a fact; it's irrefutable.

They also claimed that, in the networked world, with expanded use of the Internet and the broad availability of Internet access, thousands of these copies could be distributed around the world with the single click of a mouse. And so the creators of intellectual property complained that their works were at greater threat of piracy, given the arrival of digital technology and the Internet, than they had ever been before.

Now, this really was an appealing claim. And many of us -- in fact, I daresay all of us -- believed that some change in intellectual property law was necessary in order to accommodate these twin threats. The question was: To what extent should Congress respond and how broad should the new protections be. And, frankly, what should have been an extensive debate on that very subject turned out not to be a debate at all. And the bill, essentially as introduced, as urged by the content community, was adopted, with almost no modification.

So powerful was the claim of vulnerability to piracy that Congress, in passing the DMCA, granted unprecedented rights to copyright owners, which, unless changed, will cede to the intellectual property owner total control over the work. The new right goes well beyond providing defenses against piracy. It goes well beyond what is necessary to assure adequate compensation to the intellectual property owner. It forecasts a time when the content owner can monopolize the use of the work. It will lead to a time when what is available today in the library for reading and limited copying under fair use will be available for reading and limited copying only under pay per use.

The most troubling provision in the DMCA is Section 1201(a)(1). That section declares that it is a criminal offense to circumvent a technological protection measure which guards access to a copyrighted work. It matters not why the circumvention occurs; circumventions that are designed to further piracy or to enable piracy are punished as a crime. And, frankly, I think that is not inappropriate. But all other acts of circumvention, for whatever purpose, are also punished as a crime, with the same force of the law and the same penalties. Circumventing a technological protection measure for the purpose of exercising fair use rights is punished as a crime under Section 1201(a)(1).

A time will come in the not too distant future when most of what libraries get from record companies, from movie companies, from publishing houses, will come in the form of digital media. And that digital media can easily be protected by a password.

Now, undoubtedly, the librarian is going to be given the password so that he or she can be a gatekeeper and collect whatever fee the content owner exacts as a condition for allowing the password to be used. It will be a simple encryption of some kind. It is not going to be technically very sophisticated. But the law says, however simple it is, just the use of a password, for example, can be placed as a gate in front of this copyrighted work. And then people who today would go get a book off the shelf and perhaps make that one page copy in order to produce a term paper will only be able to do that in the future when they pay a fee. So what is available under fair use now would be available only under pay per use in the future.

I am also concerned about another event. And you may not be aware that this is happening. I hope that I am not the bearer of the bad news this morning, but let me say to you that most of the record companies are now planning to copy-protect CD's. And announcements have been made by most of them that they intend to introduce into the U.S. market, perhaps even by the end of this year, demonstration versions of CD's that are

copy-protected. Meaning that you can play the CD in a regular CD player, but if you put it in your computer, depending on what particular mechanism is used to copy-protect, it may not play.

And under no circumstance would you be permitted to engage in the time-honored fair use application of space shifting. Space shifting is where a person takes a blank CD and then takes CD's that he has already purchased and rearranges the tracks, and burns his own CD so that he can listen to the music that he wants to hear in precisely the order in which he wants to hear it. That is a classic fair use. The Supreme Court, about 20 years ago, in the case of *Universal Studios v. the Sony Corporation*, held that time shifting was fair use. Time shifting is the practice of someone taking a VCR and putting a tape in the VCR and recording a television program when it airs so that they can see it later, at a time of greater convenience to them. And the Supreme Court upheld that that is classic fair use.

It's hard to imagine that the same doctrine that holds that to be fair use would not hold space shifting on CD's to be fair use as well. I am completely convinced that that is fair use. And yet that fair use application is threatened by what we now see as the intended introduction into the U.S. of copy-protected CD's, so that space shifting could not occur, people could not use the music they purchased in order to create

a CD that has the tracks that they want. And if a person seeks to do that, he is guilty of a crime, under Section 1201(a)(1).

I can absolutely assure you that, within a matter of weeks of copy-protected CD's being introduced into the U.S. market, you can go down to the college bookstore and buy a tee shirt that will have written across it the code that will enable you to circumvent the technological protection measure. You can do that today for DVD's. And I am not exaggerating; there literally is a tee shirt that has code that cracks the DVD protection measure written on it.

Well, if you do that, if you go down to the bookstore and buy the tee shirt, take the tee shirt and tack it up on the wall over your computer, and then type in the code from that tee shirt, just for the purpose of space shifting, to create your own CD so that you have on it the tracks you want to hear in the order in which you want to hear them, if you are exercising that classic fair use right you are committing a crime. You have circumvented a technological protection measure that guards access to a copyrighted work.

I think Section 1201 is a very broad overreach. It does extend to the copyright owner monopoly control. It is not necessary in order to assure fair and reasonable compensation. It is an exercise to give the creative community monopoly control over the use of the work.

In 1998, when the DMCA was being debated in the House Judiciary Committee -- I am a member of that committee -- I offered amendments at that time that would have restricted the scope of Section 1201. It would have said that it is only a crime if you circumvent for the purpose of infringing a copyright. That is what 1201 should say. And I intend to introduce legislation shortly that will restrict Section 1201's application to those instances where the circumvention is for that purpose -- for infringing the copyright. Other acts of circumvention, whether it is to exercise fair use rights or for other benign purposes, would then not be criminal conduct.

Now, I mentioned that I offered this amendment in 1998. What has changed? Well, a number of things have changed that give me reason to believe that we have an opportunity now to pass this necessary change in Section 1201(a)(1). First of all, in 1998, there was almost no public debate about any of these provisions. The public was not paying very much attention to what Congress was doing in enacting these measures. The user community was not particularly well organized in order to thwart the overreach that the DMCA accomplished.

I think a lot has changed in the meantime. There is now a growing public perception that Section 1201(a)(1) is a threat to user rights. Newsweek magazine, for example, within the last eight months, had a full-page commentary addressing this

precise subject. There have been other examples of the popular press talking about the overreach of Section 1201(a)(1). NPR has done a series of programs, and plans more, on the problems that will be created for the flow of information in society if this provision is not changed.

The other reason I have some confidence that we can succeed this time around is that the user community is much better organized. Organizations such as the Digital Media Association and the Digital Futures Coalition have grown in strength dramatically since 1998. These are organizations that publicly defend user rights. And I want to commend their work and say that they perform a valuable public service. If you are interested in learning more about their activities, they both have Web sites, and I would encourage you to visit those Web sites and learn about what they do. They could use your support. And we can use your support in Congress as we seek to reaffirm user rights and the classic balance between intellectual property rights and user rights that our law has historically contained.

Let me cite another area in which I find this classic balance between the rights of users and the rights of creators to be moving alarmingly in the direction of creators. And that is in the area of the award of business method patents. I know that later today you are going to have a presentation and a panel discussion addressing this concern.

I have introduced a bill, along with Congressman Howard Berman. He and I are both Democratic members of the Intellectual Property Subcommittee. He is actually the ranking Democrat on the subcommittee. He is ranking by virtue of the fact that the second letter in his name is an "e" and the second letter in my name is an "o." And we were elected the same year, assigned to the committee at the same time, but this is the way power is assigned in the Congress. We are very good friends. We have served in Congress together for 20 years, and we have been on this subcommittee during that time. He and I are the two senior members of the subcommittee on either side of the aisle. We have worked collaboratively to put forward legislation to address a real concern.

What is that concern? Patents historically were awarded only for mechanical inventions. In order to get a patent, you actually had to have a working model of whatever it was you wanted to protect. And you would take that to the Patent Office, and a patent examiner would look at it and say, yes, that sure looks unique to me, and here is your patent. So you had to show that you had invented something. You had to have a physical manifestation of whatever work you were trying to protect.

A lot has changed since those early days, and some of those changes have been necessary. But with regard to business method patents, the change is rampant. Mere concepts of doing

business can now entitle you to get a patent. And entire fields of commerce are being walled off through the protection of the patent law and assigned as a property right to an individual who has created a concept about a way to do business.

For example, PriceLine has gotten a patent on the "name your own price" approach to marketing products, notwithstanding the fact that reverse auctions have been known almost since the creation of commerce thousands of years ago. It's the same thing. A reverse auction is exactly what PriceLine does, but it got a patent on using a "name your own price" theme on the Internet in order to engage in the sale of a product. And that has proven to be very detrimental to other companies that would like to use it. Travelocity, for example, the number one Web site for travel reservations, has to pay a royalty to PriceLine whenever it employs the "name your own price" approach.

Here is another example: Charitable giving on the Internet was patented as a practice, as a method of doing business. And then the person who got that patent immediately sued the Red Cross, which -- guess what? -- solicits charitable contributions on the Internet. This is an overreach of the patent law, and the time has come to change it.

I am concerned, if we do not change the award of business method patents, that we are going to see entire fields of commerce walled off, and then the patent law will accomplish

exactly the opposite of its intended result. The patent law is designed to encourage innovation by giving limited protection for a limited period of time to the originators of works as an incentive to create more works. But by walling off entire areas of commerce, business method patents do just the opposite. They inhibit competition because they make it impossible to compete in that space. And by inhibiting competition, they broadly dis-incent innovation.

Now, what are Howard Berman and I trying to do? Well, a couple of things. And really very simple things, but necessary things. First of all, our bill would say that something is not novel simply because a known and recognized practice is transported from the physical world to the Internet. The reason that PriceLine got its patent, the reason that charitable giving on the Internet was patented, was because something that was well known in the physical world was transported to the Internet and that supposedly made it novel.

You know and I know that a practice is not made novel simply because it is carried out in a new medium. But the Patent and Trademark Office was of a different view. We would say that simply placing something on the Internet that is known, and known and well understood in the physical world, does not make it novel.

Secondly, we would provide an opportunity for the Patent and Trademark Office to get better information about what the current state of the art is. The PTO is directed not to award a patent if the subject of the patent is also the subject of prior art. That is the term of art that is used. But the PTO at the present time really does not have very good access to that information. It searches its own database, but because many of these patent applications are not published and we don't know that a patent application is pending, the general public does not have the opportunity to educate the Patent and Trademark Office about the existence of prior art. We would provide that opportunity by requiring that the patent applications be published, and then providing a formal proceeding whereby the patent examiner would receive information from the public about what the prior art is.

We would then establish a formal opposition proceeding after a patent has been issued. And this is something that I think is very important. The European Union has an opposition proceeding today; Japan has an opposition proceeding today; but the United States does not. If you want to challenge a patent once it is issued in our country, you have to go to court. And you have to persuade the court, by a very high standard of proof, by clear and convincing evidence, that the patent examiner was wrong in issuing the patent. And so if you come in just with the

majority of the evidence that the patent should not have been awarded, that there was prior art, you are not entitled to win. You have to have overwhelming evidence that there was prior art in order to win.

It is such a high barrier that it is a very rare day indeed when a patent is overturned through this challenge in court. We need a formal administrative opposition proceeding, and we need a standard of proof that reflects reality. And that is merely a preponderance of the evidence that the patent should not have been awarded. And we would provide that opposition proceeding.

I can tell you that our bill is strongly opposed by the people who formally represent intellectual property interests in the Congress -- the American Bar Association's IP Section, the intellectual property owners -- who are the most frequent witnesses called before our subcommittee on any matters relating to patent law. It is a rare day indeed when someone who represents user rights is even invited to testify in the Congress.

So while much has changed, much needs to be changed still in terms of the way that the Congress evaluates these questions before we can achieve the kinds of rebalancing that I think is necessary. Let me also comment on one other subject.

And that is the question of the delivery of music across the Internet.

I notice that you have a panel today on what happens in the post-Napster world. And among the subjects to be discussed are the potential for compulsory licensing and other devices that would ensure distribution of music on the Web. Well, let me just make a few comments concerning the range of subjects that I think you will be discussing.

The first point to be made I think is that in the post-Napster world Internet users who have become accustomed to downloading music from the Web have some expectations. Now, they have two basic and legitimate expectations. One of those is that there will be available on the Internet music that is there for permanent downloading. Meaning that when it's downloaded to the hard drive it will stay on the hard drive in perpetuity, until the user decides to erase it.

The other reasonable expectation is that the music that is downloaded will be portable, meaning that it can be transferred from the hard drive to an MP-3 portable player or to a CD that you would burn for yourself, like we discussed earlier, or other kinds of portable devices. That is what people got used to when Napster was alive and kicking, and those are in fact reasonable expectations.

What is not, in my opinion, a reasonable expectation is that the music will be available for free. We are all adults. We understand that unless compensation flows to the creator of the product, there is not going to be any more product. And I think most Americans fundamentally understand this and are willing to pay a reasonable fee if they can get something that meets their legitimate expectation of it being a permanent download and something that is portable and not tethered.

Frankly, I think the only defense that the record companies are going to have to the new generation of peer-to-peer services, the generation that moves beyond Napster, that don't have central servers, that are not subject to suit because there is literally nobody to sue, the only defense that the record industry is going to have to this new generation of peer-to-peer services is to make available itself on the Web the very product that the consumer legitimately expects to be able to receive for a reasonable fee, portable and permanent downloads.

But instead of doing that, the record industry is, in my opinion, attempting to monopolize distribution of the product on the Web and to dictate the format in which whatever is distributed on the Web will be distributed. It is attempting to monopolize, through MusicNet and PressPlay, the two sites on the Internet that are being formed by the companies that own 80 percent of the world's inventory of recorded music, threatening

the day when we will have a vertically integrated duopoly for the distribution of music on the Web.

I should say parenthetically that a couple of other sites have been licensed, but under restrictive terms.

And at the same time, the industry is seeking to dictate the format in which this music will be distributed. The downloads will not be permanent. They will only reside on the hard drive as long as the purchaser continues to pay a monthly subscription fee or in some other way continues to compensate the record company over time; and the downloads will not be portable, they will be tethered. Meaning that they can reside on the hard drive, be played on the speakers that are attached to the computer, but they can't be transferred to some portable device, like an MP-3 player.

And you know, I don't think it's going to work. I really don't think that these products are, over the long term, going to be acceptable in the market. And I think the recording industry is going to find itself, with regard to these new services, rather powerless to respond. Because people, in the absence of being able to get products that meet their legitimate expectations of being permanent and portable, are simply going to go to Gnutella or FreeNet or some other place where that product is available. That is my prediction. I think that is going to

be the result. And I think the industry eventually will see that. I hope they see it sooner rather than later.

I have introduced a bill on this subject as well. I am joined in introducing this measure by my colleague Chris Cannon. Chris and I both serve on the Judiciary Committee. He is a Republican and a respected member, and I am pleased to be partnering with him in this effort. We call our bill the Music Online Competition Act. The acronym is MOCA. And our goal is to provide a caffeine injection for the delivery of music over the Web. So much for the commercial.

We do a couple of things in this bill that I think are very important. And I won't even mention all of them because my time is about up here. But let me say that, among other things that we do, is to provide a right to make backup copies. If you go out to the Web and you buy music and it's on your hard drive, you ought to be able to make a backup copy of that for purposes of prudence. My hard disk has crashed at one time or the other; I suspect that yours has as well. And when that happens, you shouldn't have to go back to the Web and pay a fee again in order to restore that music to your hard drive. Prudence suggests that you ought to make a backup copy, and the law ought to accommodate that need.

The law is curious today. It allows you to backup the software that you use in order to put the music on the hard

drive. So if you are using the RealPlayer or RealJukebox software for example, you can make a backup copy of that. That is not copyright infringement. But if you try to make a backup copy of the data that you have used that software to put on your hard disk, that is a copyright violation. You ought to be able to do both. You ought to be able to backup the music just like you can backup the software. And our bill would allow that.

We also provide a mechanism for clearing the rights of songwriters, composers and publishers. That does not work very well under existing copyright law. And the major record labels, as well as those we would like to see competing with them and distributing music on the Internet, need to have this change in the way that copyrights are cleared when those copyrights are owned by publishing and composer and songwriter interests.

The most important provision in our legislation is the nondiscrimination provision. And it would say that if a record company licenses anyone to distribute its inventory of music on the Internet, it must license other companies that come to it with an offer of the same terms and conditions. So the terms that are extended to the first licensee would therefore be available to competitors who would like to distribute music on the Internet.

There are a number of precedents in the law for doing this. This is not something new and earth-breaking, but it is

important. And it is important because, in the absence of this, I am concerned that we are going to have the companies that own 80 percent of the world's music dominating the distribution of music across the Internet, and using their copyright interests as a way to leverage a business in a whole other market -- that other market being the market for distributing the product.

It may be an antitrust violation. In fact, the Justice Department has launched a broad and full-scale antitrust inquiry on whether or not the launch of MusicNet and PressPlay, which are owned by the companies that own 80 percent of the world's recorded music, constitutes an antitrust violation. And I was glad to see the Justice Department's intervention in this matter. I think the fact that the Justice Department is so interested lends credence to the notion that Chris Cannon and I have put forward -- that the law should provide a clear nondiscrimination right for those who seek to compete in distributing music across the Internet should have the opportunity to do that.

We would welcome your support for that legislation as well. I mentioned several bills that I am either sponsoring or plan to here this morning. I would like to have your support for all of those. I never miss the opportunity to use a forum like this in order to commercialize what I am doing and ask for support; it is fair game. If you are interested in getting more details about any of these measures, then you can go to my Web

site and we have more descriptions there. And I hope that you will assist us in these measures.

Mostly today I just want to say thank you for inviting me to be here. These are among my favorite subjects, and I think they are tremendously important subjects as collectively we seek to assure that information flows freely in this society and sustains this democracy. Because without the free flow of information, all of our institutions are placed at risk.

Thank you very much. It's good to be with you today.

(Applause.)

MODERATOR: Tee shirts with the name "MOCA" will be on sale in the lobby, and the Congressman will give you a demonstration of downloading, for those of you who are still inept.

(Laughter.)

MODERATOR: We have about five minutes for questions. Yes, over here.

QUESTION: You mentioned the publication of patent applications. Wasn't there legislation within the past years that mandated that to some extent?

REP. BOUCHER: Yes, there was, but it's very limited in its application and it only applies in those instances where the patent application is not only filed in the United States but also filed internationally. So, for patent applications that are

filed only in the United States, there is no requirement that the patent application be published. That means that it goes through the entire review process without the public even knowing that the application is pending. So there is no legitimate opportunity to offer evidence that, whatever the subject of the patent application is, it is also duplicative of prior art. And that is what we are trying to fix.

Now, I am not going to suggest that this will be easy. The reason that the original publication law was so limited is because small inventors in the United States were very concerned that if their patent application got published, that would simply be an invitation for somebody to pirate their work -- primarily people overseas who would not be subject to the reach of U.S. law, who would take whatever they had invented here in the U.S. and simply reproduce that work, and maybe even import it back into the U.S. in competition with them. They were quite concerned about that. And in response to that concern, the law was written as I suggested.

I think the time has come for us to do what Europe and Japan already do, and that is to publish all of these applications so that the world knows that they are pending. Nobody is going to be really disadvantaged by that. We have a law in the U.S. that says that the patent's interest goes to the

first person to invent. It is not the first person file. And we are different from Europe and Japan in that way, too.

In Europe and Japan, the first person to file gets the patent right. But, in the U.S., the first to invent gets it. And if the person really invented this, he ought to be able to prove it. So I don't think requiring publication of the patent applications in a broader way would do any fundamental harm, and it would do a lot of good.

MODERATOR: Another question, from right here in the front.

QUESTION: Good morning. You mentioned earlier how you felt it was fair use to make a photocopy of a page from a book for the purpose of quoting it. I am curious, how do you think we should be allowed to quote from a film?

REP. BOUCHER: I think the same principle applies. I am not aware that the courts have actually had a case that involved using a film clip for some noncommercial purpose. But to the extent that it is -- for example, if I want to use a film clip to send a greeting card electronically to my mother, I ought to be able to do that. If taking five seconds from "Gone with the Wind" is a compelling way to make a point that I want to make in a greeting card, I ought to be able to do that.

Now, I shouldn't be able to take that five seconds from "Gone with the Wind" and use it for some commercial purpose.

That is an act for which I should pay compensation. But as long as I'm simply doing it for my own convenience and to make a point and, effectively, to exercise free speech rights, then it ought to be permitted.

You can pretty well analogize where the limits of fair use ought to be by deciding what ought to be within the realm of free speech and what shouldn't. Now, it is still not a real bright line, but if you bear in mind that the reason for fair use to begin with was to give vitality and sustenance to free speech rights, it gives you a guide as to how the courts are likely to interpret the fair use principle.

MODERATOR: We have time for one more question. Right here.

QUESTION: You talked about the threat to users, or actually the shift with the current legislation in favor of creators versus users. Perhaps you could discuss what threat there might be to users that creators might use in the guise of fighting terrorism. I know, with the USA Patriot Act, the recording industry had proposed a rule which would allow them to scan hard drives and see if any material on the hard drive was in violation of copyright laws. They were trying to do that in the guise of fighting terrorism.

What other threats do you see or do you know of that the recording industry or anyone else might use to enforce the

property rights but also do that in the guise of fighting terrorism?

REP. BOUCHER: That's a very good question. And I'm not sure we know the full answer to that yet. Because it is awfully easy, given the urgent need in our country to have enhanced security, to wrap in the flag a lot of old ideas, a lot of old agenda items that people have been trying to promote for a long time that, for one reason or the other, were not successful and being acted upon and simply now say that because we have an enhanced need for security we have to do these things. I think the example you cited about the RIAA trying to get an overly broad right, as a part of a terrorism bill, and only going to one house in order to do that is an example, and we're likely to see some others. But I don't have a list.

What I can say is I think we need to be very vigilant, to make sure, when legislation is passed in response to security threats, that the remedies that are provided in the legislation are directed to enhancing security and that we don't go beyond that.

I am very concerned about some of the provisions of what I think was the misnamed Patriot Act. I voted against that. I was one of a handful of members to vote against it. I voted against it because it would allow law enforcement, without any showing at all other than general interest, to be able to track a

person's Internet usage pattern. It gives law enforcement access to routing, signaling and addressing information. Those are the terms that are added to the wiretap and pen register statute.

That means that a person would have his entire Web site viewing history exposed without any showing of the likelihood that he is involved in criminal activity. It is simply on a showing by the U.S. attorney that it may be relevant to an ongoing criminal investigation. There is no judicial discretion to deny it, so it is there. And law enforcement can now look at all the Web sites that you visit.

I, frankly, did not think that was necessary to respond to this threat. And largely on the strength of that I voted against the bill. I think, over time, more people are going to say, gee, we didn't know that was in the bill. But it is certainly there and it is going to prove to be problematic.

Like I say, I don't have a list, but be vigilant. Don't be afraid to speak up. Nobody should feel intimidated in this atmosphere to stand up for traditional American rights. After all, that is what we are fighting to defend. And freedom of speech is among those and privacy rights of Americans are certainly among those. And it is no disservice to our country to speak up in support of those fundamental values.

MODERATOR: That was the last question. Thank you very much.

REP. BOUCHER: Thank you all very much. It was good to
be here.

(Applause.)

(Whereupon, the Morning Keynote Address concluded.)