

The Walt Disney Company submits this "One-Pager" in connection with the ICAC DRM Event to provide some balance to the one-pager views regarding S. 2048, The Consumer Broadband And Digital television Promotion Act. Contact Preston Padden, 202-222-4700.

1. URGENCY - Film producers, who invest tens to hundreds of Millions of Dollars per film, lead American trade exports. In seeking to earn a return, so that we can pay our artists and computer animation technologists, we cannot compete - nor should we be expected to compete - with free perfect copies of our OWN films.

Estimates indicate that in excess of 350,000 pirate films are downloaded every day in the U.S. This problem will become more difficult to solve with each passing day.

2. THE APPROPRIATENESS OF GOVERNMENT ACTION - Years of private sector discussions have NOT yielded a resolution. Government has traditionally played a role in the setting of standards. Some critics ominously complain that S. 2048 would require the FCC to certify every computer, PDA, etc. But, all one needs to do is turn over one's computer or PDA and to see that the FCC already certifies all such devices so such a role is hardly novel. A government deadline for private sector discussions is essential to ensure that those discussions do NOT drag on forever.

3. BREADTH - Some complain that S.2048 is too broad. But, the Bill applies to only those devices that can "reproduce", "convert" or "retrieve" copyrighted works in digital form. The critics should list those digital devices that CAN reproduce, convert or retrieve copyrighted works on which the critics believe that theft of movies should be permitted.

4. PROTECTING CONSUMERS - On this issue, S.2048 gets attacked from both directions. Some argue that the Bill would lock up copyrighted works and deny consumers home copying and fair use opportunities. Others (see SIIA one-pager), complain that the Bill grants consumers excessive rights and unduly restricts the rights of copyright owners. Both criticisms cannot be correct. In fact, neither is. S.2048 DOES ensure that consumers have a seat-at-the-table as technology standards and encoding rules are set (an assurance that consumers do NOT have today). And, S.2048 does statutorily protect, and even expand upon, consumer personal taping and fair use expectations. In a section unambiguously entitled "Personal Use Copies", S.2048 expands upon the Supreme Court holding in the Sony Betamax case by assuring that consumers may make personal copies of any broadcast or cable/satellite basic or premium network program (NOT just broadcast as in Sony Betamax), for any lawful use (NOT just for time shifting as in Sony Betamax). Moreover, Sony Betamax simply held that the personal copy was not an infringement. S.2048 goes beyond this holding and prohibits the use of government certified technology to prevent the personal taping. In another section entitled "Limitation On The Exclusive Rights Of Copyright Owners", the Bill further provides that encoding rules for government certified technology (for example for new distribution technologies), MUST respect fair use. And, modifications to certified technology standards may be applied only prospectively and must take into account the impact on older consumer equipment. In fact, S.2048 puts consumers in a better legal position than they are today without unduly restricting the rights of copyright owners.

5. STIFLING INNOVATION - Critics argue that S.2048 will stifle innovation. On the contrary, the Bill requires technology standards that are "renewable", "extensible" and "upgradeable". The Bill also provides for modification of the standards WITHOUT requiring any government pre-approval.

6. NOT 100%, BUT IT CAN BE DONE - Critics complain that copyright owners are seeking "Fort Knox" and that there is no technology that can stop all piracy. In fact, copyright owners are NOT seeking a 100% solution. We know that copies posted "in the clear" today are gone and can never be controlled. And, we know that even with the best technology solution there will continue to be hacking and piracy around the edges. But, a combination of KNOWN watermarking, DRM and similar technologies can be implemented to stem the flood of peer-to-peer film piracy for newly released movies and provide a reasonably secure environment that will help to hasten the roll out of Broadband.