

# CONSUMER ELECTRONICS ASSOCIATION

## IP AND CREATIVITY

### REDEFINING THE ISSUE

PANEL DISCUSSION

THE INDUSTRY LEADERS REACT

JON HEALY, MODERATOR

PANELISTS:

MITCH BAINWOL  
MARKHAM ERICKSON  
DAN GLICKMAN  
GARY SHAPIRO

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[Joined in progress.]

MR. JOSEPH: -- how critical these issues are to the future of our industry, how critical they are to your ability to innovate and bring new products to market, whether you're a retailer, an installer, a manufacturer, any way involved in the industry, the issues we've discussed today, that we'll discuss in the next panel are absolutely critical to the future of our industry. And with that in mind, I make an urgent plea for you to get involved in CEA through our committee work, through our CEA PAC, through our Government Affairs Council, through the Communications Committee, there are a number of ways to get involved in the organization, so you can help make a difference, and help support us, so as we try to fight to make sure that we maintain your right to innovate, and consumers' rights to access the technology you create and the various features and functions that continue to excite and bring these products to market.

I would also like to make a quick plea, and a quick recognition of a couple of upcoming events for CEA. Our annual industry forum used to be known as the Fall Conference will be held this year in Las Vegas, Nevada, October 18-20. Yes, you do get to go to Las Vegas just a couple of months before you gather there again for CES. And, of course, the 2006 International CES -- it's frightening to think that it's not too early to think about CES -- will be held January 5th through 8th of next year.

It's been a long day, and for those of you who have been here for two days, it's been a long couple of days. But the fun is just beginning. Our next panel, of course, features the industry association leaders who will take up the issues that have been discussed today, respond to some of the things we've heard today, and talk a little bit about what they see coming down the pike, specifically in terms of legislative and regulatory issues.

And who better to moderate this panel than Jon Healy, staff writer of the LA Times. As many of you may know and may remember from yesterday, Jon was a staff writer at the LA Times, and it's really appropriate to have Jon moderate this panel, he covers technology policy, tech policy issues from the entertainment capital of the world, Los Angeles. He has an interesting perspective. He's close to the content community, and close to the technology policy. Jon has 25 years experience as a journalist. He's worked on the East Coast in North Carolina, and moved on to LA.

So, without any further ado, let me introduce Jon Healy, who will introduce the panel.

(Applause.)

MR. HEALY: Just to remind you, I'm sort of the man behind the curtain. Pay no attention to what I say, but if you should have the bad judgment to quote anything that I say, given that this is Washington, please attribute my remarks to my boss, John Carroll.

We will also be joined shortly by two more people. Let me say that I don't have a personal stake in this, although I work for a copyright owning entity, I do not own any copyrights in what I do, and, in fact, I would not describe what I do as intellectual property. I am, however, a former recording artist, and my material exists in the obscurity where it belongs, because this was the sampling era, and we didn't pay for our samples.

I'm joined today by a really tremendous panel. I have Mitch Bainwol to my immediate left. He has been Chairman and CEO of the Recording Industry Association of America for a year and a half. Next to him we have Markham Erickson, who is the Executive Director of NetCoalition. That's a trade association here in town for a number of leading Internet companies, companies like Yahoo and Google. To his left, I have Dan Glickman, who is President and CEO of the Motion Picture Association of America. He's been on the job for about six months. And Gary Shapiro you know very well, President and CEO of the Consumer Electronics Association of America.

I was hoping that we could start off by hearing from Mitch and Dan responding to one of the points made very early today, the question of just how file sharing is affecting music and movie industries. Our first panel today went back and forth about that, but I think that the general conclusion or the dominant notion was that it hasn't had a provably large effect. Now, from your points of view, is that true, Mitch?

MR. BAINWOL: Absolutely not. First of all, thanks for having us. Gary, we appreciate the opportunity to be here. It's a bit of an away game for us, but it's March Madness, what the heck. There's no question that there's been harm, and in fact that there is a debate about whether or not there's harm is a little confounding to me.

A couple of points, one is, what's the experience? In the last five years, the five-year period, we saw in unit sales, sales go down by about 30 percent right as the advent of file sharing began. So, one, experience tells us that, in fact, it was a precipitous decline in sales.

Two, theory: what is the basic economic theory? There is this notion of perfect substitution. You have two products, one costs money, one is free, the marketplace goes to free. So theory supports, in fact, the reality.

Third, common sense: if you can get something for free, use common sense.

So, if you add up common sense, reality, theory, then you have a bunch of studies out there. You have one study, Overholtz Gee Strumpf, that's a very tough thing to say, it's also a tough study to digest, almost as tough as the names. Reality is that study is an outlier. All the other studies, virtually every other study, says, in fact, there is harm, there

is considerable harm. The fact that the press pays attention to the outlier and not to the overwhelming body of evidence means we have a panel like this today where we are examining whether or not there's harm when on the face of it there's harm.

MR. HEALY: Dan, you want to speak for your industry?

MR. GLICKMAN: First of all, thank you very much for having me. It's an interesting transition going from the regulation of corn to the regulation of movies, but I have told people the biggest part of the word agriculture is culture, and it's one of the things that brings me to tie between these two industries.

First of all, I think we are facing a business model which has the expectation that users will engage in copyright infringement, and that is very, very worrisome for us. We have not suffered the same fate as the music industry, but I spent the last three years at Harvard at the Kennedy School, and I spent most of my time with juniors and seniors in college. And there is no question that the proverbial wolf is at the door for us. And, the wolf may not be devouring us right now, but it will happen. And it worries us very much because the cost to produce and market an average movie is approximately \$100 million. And while we announced yesterday that those costs have actually come down a little bit in the last year, the implications are so monumental in terms of the ability to create this product that we believe that with the new technology, with broadband changes, with the ability to get material on the Internet in a way that can be obtained in short order, in short sequences, in smaller bits of time, that we will also suffer dramatically in the future. And I think that the damages that the music industry has suffered will be coming our way if this problem is not resolved.

MR. HEALY: Gary, go ahead.

MR. SHAPIRO: First of all, I just want to welcome my colleagues up here. For at least two of you, this is not the home court advantage, and you came into the lion's den, and we appreciate that. It takes a certain amount of courage and courtesy. So, I'm going to try to be very restrained.

MR. GLICKMAN: And remember that Daniel was in the lion's den, and he fought off the lion's, so hopefully that will happen this time as well.

MR. SHAPIRO: I will admit that the entire day was not structured to be totally balanced, although we had some balance, but this is the Consumer Electronics Association, and we represent 2,000 technology companies, and we have a history behind us of recognizing that every time that someone has claimed that technology is going to destroy the content industry, they've been wrong, without question. And I am mindful that the tenor of the rhetoric sometimes is not helpful. And for those of you here who were not here very early in the morning, I began the day by saying, if you could stop using the pejorative words of piracy when it's somebody doing something in their home for noncommercial purpose and falsely equating copyright owners with real property and

using all these analogies, I promise to stop responding as I'm about to do, and I'll do it one more time.

When my friend from the RIAA, he said a couple of things, one thing he said there's no perfect substitutions, it's common sense, and here I am. You know what we're paying for this water? I don't get it, but the point is, water is the kind of thing where it's available for free, but yet we're always paying for it. I just don't get it. So, you can compete with free, and people do it all the time in all sorts of different industries. Whoever would have guessed that we'd be doing that.

In terms of your sales down comment, there's been a lot of studies done. We're issuing one today which I think actually there will be a lot in here you'll be very gleeful about, because, like it or not, we're honest in what we release, but what we've found is, number one, that downloading content is going down, actually. It's about 83 percent to 67 percent in a two-and-a-half year period. But we also found that access to online content has a positive impact on sales in some cases. In music, 38 percent of people buy more music if they're accessing content online; 41 percent are buying more movies, and we'll release the results of the surveys. Believe me, there's a lot you're going to love in here.

But the point of this is, these are new technologies that are coming out there, there's a lot more. On the prior panel, there was a lot of discussion about the accelerated pace of change. And all we're saying in the technology world is, please don't hurt us, we're just asking to maintain the status quo at this point. We're very concerned, obviously about what's going to happen with the court. Anyone who has been here all day has learned that. And we want to be able to introduce new products that consumers will like and enjoy.

MR. BAINWOL: And we want you to have absolutely the same opportunity to do exactly that. We want you to introduce new products that consumers can enjoy. We just want you to have some content that can make those products meaningful.

You said a bunch of things there that I felt compelled to talk about. One of which is the water metaphor. One, water is not free. And, two, to compare water to the genius of creativity or the genius of any innovation, I think, is just a real stretch. A song that comes from the brilliance of a human mind is nothing like rain coming from the skies. And to make a parallel there I think is silly.

We do have common interests, there's no question. For a fan, what do fans want? They want cool devices, they want awesome music, the two interwoven is exactly what we're all about. That's something that we all share. We also share something else I think that's critical. That is, none of us want to overrule Betamax, we just have a different point of view about whether Grokster ought to be considered legal under Betamax. We happen to think that a business model predicated on theft is not what the Justices meant 20 years ago in the Betamax decision. A business model predicated on theft really will have an incredibly damaging impact on the future generation of new art.

MR. HEALY: Markham?

MR. ERICKSON: Jon, I know you want to get into the Betamax issue later, so I'll leave that aside for a second. But on the question of the economics, I do think in many respects solid economic data and conclusions from that data is still premature. In many ways, the recording industry's clear economic downturn of the last few years is probably due to a complex series of events. In many ways, I think they've faced a perfect storm of issues. They have increasing DVD sales, which are cannibalizing CD sales, increasing home game sales with kids who have a limited amount of discretionary income cannibalizing CD sales, and clearly there's been piracy, and the extent of which one of those factors is contributing to the economic downturn I don't think has been solidly demonstrated.

I think the real question in this area is in the infancy of P2P, these so-called P2P technologies, is whether the economies can turn the other way for both technologists and Hollywood, and we can use the synergies of these fantastic technologies, these fantastic content that Hollywood has developed, and hopefully the debate we're having now is a one or two-year debate. And in a couple of years, we're going to be able to take advantage of these synergies with technologies that protect content, technologies that distribute content to millions of more people in fantastic new ways.

MR. HEALY: Let's jump off of that point, and I would like to ask each of you to talk about how well you think the entertainment industry has responded, not exclusively to P2P technologies, but the new opportunities that Internet has presented? Do you think that music/movie/game companies have responded well or poorly, or something in-between?

MR. BAINWOL: Should I begin?

MR. HEALY: Sure, unless you want the last word this time.

MR. BAINWOL: No, no, I'll start. I think the question is, which semester are you talking about. Now, five years ago, I think we had one story, and the last couple years I think the grade in effort is certainly an A, and in product I think is probably a B+, and we've made a very hard pivot to the digital world. There's no question about it. We're licensing aggressively. Those streaming downloads, P2P. We think P2P is a great technology, and that there's room there for it to be part of the distribution of music. The question is whether or not you're going to have the Kazaa/Grokster model, you're going to have the SNOCAP/Mashbox model. If the court does the right thing with this decision, we're going to see all sorts of investment capital flow into Mashbox and SNOCAP, and legitimate applications of P2P. That's a win/win.

MR. HEALY: What about somebody like, we just heard on the last panel from INTENT MediaWorks, which is trying to be a bridge into the old networks, in a similar way to Mashbox, where they will offer protected content through existing P2P networks.

Is something like that fine, or does that legitimize an environment that you folks simply can't support?

MR. BAINWOL: You're going to have a world, and at some point this year we're going to have a Mashbox, or something like Mashbox and the Morpheus' of the world, and the question is, why would a consumer go to Mashbox instead of Morpheus? In order to force that conversion, you either have to have some differentiation of product, or something that's different. And so long as you protect the theory that's going on, and you give false comfort to this notion that these business models are legitimate, you've got a real problem. I just want to be clear, this debate has evolved substantially over the last three or four years. I think it was fair to say several years ago that it was digital versus plastic, and I think those who said that the industry had not responded quickly enough, I think, they at least had a plausible argument, and I think the times have totally changed. Several years ago it was digital versus plastic, last year we saw really the takeoff of iTunes, and Napster, and the other legitimate sites, and this year is going to be about the evolution of the debate to P2P versus P2P, legit versus illegit. We have a common interest here in legitimate business. We all want to pay taxes, we want to grow jobs, and we want to create product. It's based on this notion of property, and it's based on this notion of legitimacy. And that's something that we can work on together.

MR. HEALY: Markham.

MR. ERICKSON: I think, let me make one point which I think is critical in any debate that we're going to have ongoing before policymakers in this area, and that is, the entire architecture of the Internet is essentially a peer-to-peer platform. It is impossible to create rules that address one kind of P2P company, like a Grokster, without affecting the entire Internet industry itself. Any time you have an architecture that allows users, as the clients, to request information from other users somewhere else on the Internet and receive that information directly, you're talking about a P2P system. And our engineers tell us that increasingly, the Internet is going to be a decentralized medium. So it's going to be very difficult to apply rules that are going to be able to arbitrarily distinguish between those that some people perceive as the bad actors and those that some people perceive as the good actors.

To answer your earlier question, I think the movie industry has done an amazing job in embracing technology. DVDs are a perfect example of an area where they worked with the CE industry to come up with protocols and standards, and they have a terrific product, and it's demonstrated by the increasing sales of DVD products. They embraced digital content, and consumers are rushing to buy DVDs.

MR. HEALY: But what about the Internet, and the opportunities presented therein? Can you point to a similar forward thinking approach by the movie industry? Dan, do you want to take this?

MR. GLICKMAN: First of all, thank you for giving my case in terms of the DVD, I appreciate it very much. I think it does reflect a giant -- it was a quantum leap

forward. The technology involved by both the movie industry and the technology community developed a technology which has revolutionized the way people listen and watch entertainment, and I think it does show that there is not an inherent resistance to technology.

But I want to go back to what you talked about just briefly. Having served as a member of Congress for 18 years, I don't buy this fact that you can't have appropriate rules to govern in a civilized society when it comes to balancing interests, interests between the right of consumers to see anything they want to and the right for people to be compensated. That's why you have your copyright laws. That's why you have your copyright office. That's why Congress makes the laws. Sometimes Congress mucks up the laws, but still it has the constitutional responsibility to do it, and that's why the court is hearing this case of MGM versus Grokster, because you have a conflict between a variety of public policy issues and I just don't accept the fact that it's survival of the fittest, and there's no way that you can operate these in a rules-based society. I just don't believe that's true.

In terms of technology, the movie industry, in addition to the DVD, is offering online services, video-on-demand services, Cinema Link, Movie Now and others. The companies themselves are actively engaged in modernizing those services, NetFlix, other kinds of activities are out there in the world, and I suspect there will be a quantum leap in those technologies as time goes on.

Yesterday, I was out in Las Vegas at Show West, and I demonstrated the new Sony Playstation, PSP, where, in fact, I showed it with one of our companies' movies, Spiderman 2, which happened to be a Sony movie on there. It's a quantum leap in terms of technology, in terms of getting consumers the kind of material that they want to see. So, I mean, have we gone as far as we can go? Absolutely not, but clearly the move is towards radical and dramatic innovation, with the underlying purpose here to provide quality material to people at a reasonable cost in a hassle free manner, but at the same time being compensated for it.

If I just might add one other thing, I often hear this debate and, Gary, I've heard you talk about this in terms of the classic battle between technology and content. I don't really view it as that way. I view it as a balance between a variety of interests in our society that ultimately Congress and the courts are going to have to resolve, in which this case is going to be resolved in the courts. But I view it as a battle between legitimate and nonlegitimate. When I was at Harvard, some kid came up to me, one of the few who was on my side, and said this is a battle between the artist and the con artist. I view this not so much as the battle of good and bad, but I view it as the battle between ownership, whose ownership it is, and whose legitimate right it is to protect it. And in our society, if we look back through the history of modern civilization, we remember what we, as humans, have done through artistic works, art, dance, painting, music, and now the great American art form is movies. And naturally what we want to do in our business is keeping up with the times, but preserving that ability to product that content so that people will, in fact, have something to enjoy and remember.

In all the days I spent on this CES floor, where you were so kind to invite me to, you walked down the halls, and you watched all those beautiful pieces of equipment, and on there, on there, was largely content which came from the music and movie industry. And you've got to have both. You have to have the delivery system, and you have to have the content. But the only way you're going to do it is to preserve that right of the creator to be compensated for, and do it in a modern way, and do it in a way that, in fact, preserves and enhances new technologies.

MR. HEALY: If I could rephrase or suggest another way of looking at the conflict, the Internet is about anytime, anywhere, anything. That's what it makes possible, that's the opportunity. And the movie industry is about theatrical release first, then second run theatrical, then airlines and hotels, then home video, then pay per view, then broadcast. You've got a windowing structure. So, it seems to be that what we're talking about, if there's a conflict or a battle, it's between the business model that's predicated on this long series of things, and the nature of the Internet, which is about, I just saw Spiderman 2 in the theater, I want to see it again in my home.

MR. GLICKMAN: Well, if I may just add that, again, the studios make their own judgments on how they are going to release, and when they're going to release, and what the windows are going to be. Those windows have shortened, in many cases, as you know, over the last several years. And they're going to make those decisions based upon how they can best protect their product in the marketplace, and that is already beginning to happen. And, as I said before, you are seeing very dramatic innovations in the area of video on demand, and I suspect those will continue and improve in terms of their quality and the ability.

MR. HEALY: Gary?

MR. SHAPIRO: Thank you.

I want to respond to your question about grading, because it's such a cool thing to act like you're a teacher and give people grades. I think the motion picture industry did a great job with the DVD. Jack Valente and I sat down probably a dozen years ago, and we created the Copyright Protection Technical Working Group, which has had these phenomenal set of regular meetings on the West Coast, and that was the genesis of the DVD protections. And that, I think, by all accounts, has been a model of industry cooperation without involving Congress. I think the motion picture industry had it right. They were very prescient there.

At the same time, I think as the earlier panel indicated, the music industry went exactly the wrong way, they were too slow, as even Mitch kind of acknowledged, they're missing the opportunity today. And that is, they basically let consumers accept a lower quality audio standard -- we've gone from CD down to MP3 -- rather than going up and working with us. You have DVD audio which is great protection, or SACD, and you also have the other aspect of HDTV, which is Digital Dolby Surround Sound. Everyone is

greatly in love with the wonderful picture from HDTV, but very few people are aware of the fact that the sound is the biggest part of the experience. I think consumers are faced with a choice now, when they go in and they can see that they can buy a DVD for \$16 or \$17, and a CD costs the same amount, it's a question, in a sense, I think, one of the reasons that the consumer is downloading a lot of music is they feel the prices are unfair, they feel it just is not right, they feel they're getting ripped off. I think consumers want to do the right thing, and I think that actually the motion picture and the music industry have done a good job, and we're happy to work with them, talking about the morality of downloading, and what it means.

The question is, when you turn the morality into forcing laws and forcing things, and coming up with things like the Hollings Legislation, and the Induce Act, I don't know how you can talk about this case before the Supreme Court and say you're not trying to overrule Betamax. I mean, have you read the briefs, the amici, which basically have all sorts of intent based tests which would have technology companies in litigation up to the cozonas, because they're there talking about everything they've thought of, and what they intended. So, I mean, the reality is we're very nervous about the Supreme Court because we want to be able to produce products without having to have any copyright owner, or RIAA, or MPAA preapprove the product. And that's what it comes down to.

In terms of looking forward, I give the motion picture industry high grades. I give the recording industry, they're trying to do some catch-up work, but I still don't think they get it. And I think this Induce Act, and the fact that there's a lot of lobbyists deployed in Washington now, and the hysteria it caused, and the members of Congress were convinced to support something which was so potentially deadly to not only the technology industry, but advertisers, journalists, everyone, it's just going backwards still. So, it has to improve.

MR. HEALY: Mitch, why don't you tell us why you're trying to kill technology?

MR. BAINWOL: Gary, you're always passionate and warm, and you're so often wrong. And this is a classic example. I mean, this isn't really complicated stuff. Nobody is trying to kill technology. You engage in such utter hyperbole here that it doesn't reflect well on a common sense reasonable debate.

MR. SHAPIRO: What was the hyperbole?

MR. BAINWOL: Hold on, hold on. You've got your point of view, we've got our point of view. I think there was a neutral arbiter in this case, the federal government obviously filed a brief in this case. The federal government is not a party with an interest one way or the other, they look at facts, they make a call based on the merits, and what did they say? They said that we're right, you're wrong. They said that you can overturn -- you don't have to overturn Betamax to get at Grokster. They developed a common sense test that clearly gets at Grokster, and clearly does not get at the iPod, and yet you insist in engaging in this hyperbolic distortion of the truth here.

Are you saying that the federal government has this dead wrong?

MR. SHAPIRO: I'm saying that the way that -- look I was in that room with 30 lawyers from the federal government, some of them with the Department of Justice Office of Piracy, the Copyright Office, the federal government is replete with basically the police arm of the content community. They had a big say in that decision, there's no question about that. And if you read the brief --

MR. BAINWOL: So you're saying the government is wrong?

MR. SHAPIRO: Clearly they're wrong in this case, yes. Obviously they're wrong. In terms of the brief they filed, it's clearly wrong. Look, this case has generated more amici, I'm told, than any other case this year. It's gotten about 20 or so on both sides. Are you saying the American Consumers Union, and the consumer groups, and the retailer groups and educators and librarians are all wrong, Mitch, are they all wrong?

MR. BAINWOL: I'm saying that we have our interests, and you have yours, and that you have to look at neutral parties. The federal government is a good example of a well-considered, neutral party. The State Attorneys General are a good example of a neutral party.

MR. SHAPIRO: You didn't get a majority of them.

MR. BAINWOL: There you had 39 Attorneys General from around the country say that we're right and that you're wrong.

MR. GLICKMAN: Can I just add one thing. I think that if you do read the brief of the Solicitor General, however, and it's not a hyperbolic brief, and what it talks about is differentiation of behavior, in a sense. What is the prime purpose of the particular business model that you're looking at here? They weren't talking about every business model in the history of the world. They were looking at this business model. They weren't looking at all technology in the world, they were looking at this business model. And what they said was, this business model was established almost entirely to encourage people to avoid copyright, to have people engage in copyright infringement. Now, that doesn't mean that all business models are bad, and the government is not saying that. It's saying, this business model is bad. And it's saying that it may have to be the -- maybe policymakers from the federal and state level down the road are going to have to make those kinds of differentiations, dotting I's, crossing T's, but at some point the government -- it's appropriate for the government to come in and set some rules, and that's what they're trying to do here.

MR. HEALY: Let me ask, if I could, Gary --

MR. SHAPIRO: In 1984, there were four votes in the Supreme Court treating Sony as a bad actor. In fact, if you look at that case and go back to the federal court of appeals and the district court, more federal judges voted to enjoin the VCR and to hold

Sony as a bad actor than didn't favor it. Thank God it was a 5/4 decision for everyone up here on that panel, because it made the difference.

MR. BAINWOL: Gary, which part of when I said we support Betamax, which part of that was confusing to you?

MR. SHAPIRO: When I read your brief. (Applause.)

MR. HEALY: As much as I enjoy this, let me put out another question that I would like Markham to start with, and that is, how do you draw the line practically between bad actors and folk who shouldn't have to worry about getting sued? How do you do it in a way that lets people, technologist, for example, draw up business plans that doesn't make them have to worry how people they don't know apply their products, but rather says in a very bright line way, here's how you tell whether you're being a bad actor or not? How do you do that, Markham?

MR. ERICKSON: I don't think it's that complicated. I think, we have differences fundamental differences about what we think the Sony Betamax case stands for. The Sony Betamax case is to the IT industry and to the Internet what the First Amendment is to Hollywood. What the petitioners argued in the Grokster case was that if you somehow assist illegal activity, and you're profiting in some way, even indirectly, from that illegal activity and you don't do anything to stop the illegal activity, you ought to be liable for the illegal activities of those that are engaging in the primary illegal act. There is no way to legally distinguish between that argument and an argument that someone who listens to lyrics that tell them to go out and shoot cops, and then go out and shoot cops, and then say those lyrics induced me to go do that, to make a distinction between the argument that the petitioners are asserting and arguments that those that would try to hold the entertainment industry liable for those kinds of lyrics. There is one legal distinction. The entertainment industry has the First Amendment, rightfully so, so that when they promote, when their artists generate new content, they don't have to be worried. They can push the envelope. They don't have to be worried about content that is going to get them legally in trouble. They can be free to innovate.

Technologists want to do the same thing. They want to be able to be free to innovate without having to worry that the technology in and of themselves that they develop will somehow get in trouble if they do nothing at all with that technology except just make it available.

MR. HEALY: How do you draw the line then?

MR. ERICKSON: You draw the line between action and -- essentially between architecture and conduct, between action and simply making a product available. The First Amendment analogy, if I can just torture this to death a little bit, is a good example. If you engage in conduct, in content, in speech that is incendiary and crosses a line, courts then say that you lose the protection of free speech. We argued in our brief before the Supreme Court that if you engage in conduct apart from merely designing the

technology, where you are promoting illegal activity actively, then the Sony Betamax decision shouldn't protect you in much the same way. But the offering of the technology in and of itself should never attach liability. And that has to be a fundamental position that we all should agree on.

MR. GLICKMAN: Could I just respond? I think what you say is interesting, but I'm reminded, I think it was H.L. Mencken who once said, for every complicated problem, there is a simple and a wrong solution. And I get from you the kind of simplicity that is just not reality-based. The fact of the matter is that you have competing interests here. One interest is to reward creators who spend their life building something, either intellectually or maybe physically, and the other interest, of course, is to have people who have freedom of access. And in this -- but what we're doing here is, we're going beyond this particular case. This particular case, the MGM v. Grokster case, is a case where we believe the architecture is so inherently encouraging, so inherently based upon illegal activity that it's appropriate for the government to come in, or the courts to come in and set rules here. And I realize there's a fundamental difference of opinion here, but you have competing interests. It's not as simple as you just said because without some sort of responsible controls here, you're left with total chaos, and you will have nobody desiring to create anything, whether in music or in movies.

MR. HEALY: And the bright line there is, what's the bright line?

MR. SHAPIRO: I have a bright line that maybe even Congressman Glickman or Secretary Glickman could accept, and that is, basically, and this is in response to Senator Hatch and Senator Leahy who said, can you come up with a bright line and a very specific case, and we have always maintained, as Gigi Sohn said earlier on an earlier panel, look, we want to work with you, and we'll do anything we can, we're even willing to regulate or legislate in a narrow, narrow example of very well defined protecting consumer rights. We actually -- our industry, along with like 17 other groups -- suggested something. We said codify the Sony Betamax case, and we'll all agree since you're even agreeing now the Sony Betamax principles are good principles, and then you have one single exception, and that is for a service or a product specifically designed for use by individuals to engage in the indiscriminate, mass infringing distribution to the public of copies, blah, blah, blah, over digital networks with the specific or actual intent to reap financial gain by encouraging such individuals to engage in indiscriminate, mass infringing distribution.

MR. GLICKMAN: Is this a simple test?

MR. SHAPIRO: That would have covered the case before the Supreme Court, it would have covered exactly a lot of the things you're talking about, it would have covered P2P. I think either Mitch or somebody else was quoted on the record as saying, this is a very serious proposal, but yet there was never willingness to discuss that approach. So, we're willing to say, if you're going after bad P2P players that are truly, truly bad for the commercial interests, trying to make money off of people doing really bad things, let's work together and come up with a definition.

MR. BAINWOL: Let's be candid about the poles to this position. You've said there's a legal use, it ought to be a legal product, period. So, you would allow Grokster to go if there was once single legal use, and there were a billion illegal uses. And you would say, Grokster ought to have immunity. I mean, you've set up a position so far over on the extreme that it's hard to take it seriously. On the other extreme would be an argument that if there's a single infringement, that you're liable, and we would not argue that. We think that the government has come up with a test that is, one, common sense and, two, effective. And, remember, Sony was about effective protection, not merely symbolic protection. And my fear with conduct is that you just get to the symbolic protection there.

Let's go through the government test. The government wrote, if the defendant's product was overwhelmingly used for infringing purposes, and the viability of the defendant's business depends on the revenue and consumer interest generated by such infringement, such evidence alone suffices to support liability under Sony. What that really means is, if you're Grokster, you get caught in the Web. If you're the iPod, you don't. Now, I understand that there are some examples that are much tougher, that are much grayer. The fact that they are tough does not mean that we should just eviscerate the property right. Yes, there are things that will be a little bit tougher to resolve, but that's what the court is there for.

MR. ERICKSON: Mitch, I know it's shocking, but sometimes the government does get it wrong. And in the Grokster case itself, there is a brief filed by leading computer scientists, the people who are essentially responsible for inventing the Internet that said, government's brief totally mischaracterized the architecture of the Internet and the technology behind it.

MR. BAINWOL: I thought Al Gore invented the Internet.

MR. ERICKSON: Well, that's a separate debate that we can get into. But that test that the government offered to the court would cripple the information technology industry. What they are essentially saying is that for every product in the pipeline that is developed, the company is somehow supposed to figure out what sort of potential illegal conduct might occur through the use of that technology, and then figure out if they can design ways to prevent that conduct, whether they can do it in a way that's cost efficient, and it's an impossible test to meet without crippling the IT industry.

MR. BAINWOL: And I just don't accept that proposition.

MR. ERICKSON: Talk to our engineers.

MR. HEALY: Let me throw out a couple of questions from the audience. I should say that almost all of these questions went to or are directed at Mitch and Dan.

MR. BAINWOL: Shocking.

MR. HEALY: And I wouldn't characterize them as friendly. (Laughter.)

Starting with this one, imagine, and this is probably not much of a stretch for you, imagine that you win a complete and uncompromising victory in Grokster, will unlicensed P2P networks disappear? In particular, what about BitTorrent, or to throw in a portion from another question, anything based overseas?

MR. BAINWOL: They will not disappear. We have endured physical piracy since music began. We will endure digital piracy forever and ever. The question is whether we have a society that says, we're going to treat all of innovation equally, or whether we're going to treat property as a second class citizen, or a second class innovation. We believe that a win in the Grokster case will help us move toward a day where families have that conversation with their kids, and instead of going to Grokster, they're going to iTunes, or you're going to Mashbox, and we are rewarding the creative process. And we also believe that a good decision is going to spur an enormous amount of innovation on the technical side in terms of devices and services that do it the right way. This is all about creating great technology and marrying it up with great content. And you can't just say innovation in technology is good, but innovation in property can be discounted and tossed away.

MR. HEALY: Dan, go ahead.

MR. GLICKMAN: Obviously, I would echo what Mitch says. But I have to tell you this, I think this is a very healthy discussion about this tension between technical innovation and the creation of intellectual property rights. And it's much more complex because of the Internet, and I sense this kind of agony that goes through a lot of people who genuinely want to find some sort of bridge between the two, and I take you at your word that you want to do that kind of thing.

But I look at this picture from a bigger perspective, and that is that I go back to this thing, not only do I think the government got it right from a legal perspective, but I'm looking at this issue from a more macro perspective, from a 30,000-foot level perspective, and that has to do with the humanity and the soul of a great liberal democratic society, and it's liberal with a small L, and I think that is largely built on the creative juices that we have in this country. And I think that's why the founding fathers were so strongly demonstrable when they talked about the protection of property rights. And I believe they and their successors meant both physical and intellectual property rights. And it is what is actually been the great engine that's driven our democracy both from an economic and a political perspective.

Now, I'm not telling you that if we were going to lose Grokster it would be the end of the American Democracy, because I do think that would be extraordinarily hyperbolic. But, I do honestly believe that we've got to look at this issue more than just a very narrow economic difference between two perspectives on the definition of property and how it conflicts with technology. And, therefore, I guess what I'm saying is, I

personally believe that regardless of which way the decision turns out, this issue is not going to die anyway. I suspect it won't die in the halls of Congress. I suspect it won't die in the meetings that CEA and MPAA and RIAA are going to hold here. But I think the decision has profound consequences on the ability of our society to be culturally viable and healthy. And I think that if, in fact, we lose that innovative right, it will be bad news for all Americans.

MR. SHAPIRO: Wow. That was very well said, very eloquent.

I'm just still stuck on a couple of things. This concept that real property and intellectual property rights are somehow equivalent is just, and even in the Constitution, I just struggle with. I think the copyright community, and the content, I applaud you and your predecessors, a phenomenal job extending copyright, I think, 11 times in 20 years.

We bent over backwards, in a sense, to figure out how we can accommodate you with our products in different ways, and really going very, very far, as we heard Intel's representative talk about earlier, in so many different ways. And now the concern we're starting to have is, my gosh, what about the consumer in this equation. What about the consumer who has to figure out what can be used, and what can be copied, and what can't be, and all the different wires, and everything else in the back of their computer, or a television set, or all these products. It's getting extraordinarily difficult for consumers. What are consumers' reasonable expectations?

What's happened is, and we have some research which we'll release which shows this, is consumers are quite confused, because I think both the MPAA and the RIAA have done a phenomenal job in suing nearly I think it's close to nine or ten thousand Americans at this point, people know that a lot of this stuff is illegal. But they don't know what is illegal, and it's seeped over to what is clearly legal behavior. If you own a CD, can you make a copy of it to just get your favorite portions of it? A lot of consumers are now starting to think that is illegal. The same thing with shifting around video content. Do you have the right to do that? Consumers are starting to say, no, I can't, I can go to jail for that.

And that's a scary thing here, is that somehow there's been this massive public relations campaign with a scorched earth policy, and we've also, I'll admit, the content community are far better lobbyists than the technology industry, the fundraisers, the money, everything. I mean, we can never compete with that in the technology industry. We just want to go to the free market and fight it out outside of Washington. But the content community is very effective, because you use Congress and the government to extend your monopoly beyond any reasonable term, and you've equated this with real property. And it's the language you use about stealing, it's the language you use about piracy. And it's gotten to the point, as the earlier panel said, that the button is so highly turned that other countries are getting the beat on us in innovation because we're squelching it here because you cannot build culture on a lock down copyright law. And that's what we're creating.

MR. BAINWOL: This is not about lock down copyright. I mean, listen, five years ago the top ten hits in America in terms of music sold about 60 million units, today it's about 30 million units. That's not locking down content. I mean, that's about real life, right now, we have our stuff on the Internet before we release it in the stores. We have a practical problem, and you come up with a myriad of justifications to justify theft. Join with us, work with us, make this -- join us in this battle against wrong, and against theft. Legitimate business needs to work together and stop coming up with excuses to justify thievery.

MR. ERICKSON: Look, there are significant legal differences between real property and intellectual property, I don't want to go into them. But the fact is, it is property, and the motion picture industry and the recording industry have the right to do with that property what they want, to market it the way they want to do that. If they want to not work with certain technologies, with certain business models, for whatever reason, that's their choice.

At the same time, what I object to is when they turn to the Internet industry and say, we're not going to engage in these steps to make our product more palatable to consumers, but we want you to protect our property. We want you to take active steps to police your systems from users doing illegal activities. And we're not going to tell them what they should do with their content, and how they should take their content. At the same time, they shouldn't be Internet industry and the IT industry what we should be doing to protect their property.

MR. HEALY: On the last panel, Don Whiteside from Intel brought up that issue, and I think expressed a concern that throughout the tech industry they don't want to be put in a role of policing against infringement. So I was hoping, Mitch and Dan, you could talk about what you feel is the legal obligation, and maybe the moral obligation of companies that are putting new technologies out there in terms of whether it's their responsibility to protect copyrighted work?

MR. GLICKMAN: Going back to the case at hand, the MGM v. Grokster case, this is a business model that is almost entirely based upon encouraging people to take what they don't pay for, and getting paid to do that kind of thing. So, you know, my hope is that the case is resolved in our favor. I assume if that's the case, then both the courts and Congress will further go into the issues which you raise, which I am not qualified to go into right now. But I think that there are a lot of red herrings here that would take a victory in favor of MGM and the movie and music industry here and go into all sorts of iterations, and algorithms about what would happen in terms of vicarious liability and inducement. I don't know enough. I think most of those are red herrings, by the way. I don't think that they're going to happen.

I want to go back to the base point again, which is the ethics and morality and legality of offering something to the public knowing that it's illegal, knowing that its use is illegal, and knowing that it has virtually no legal use whatsoever. That's the issue before the courts, and that's the issue that I hope is resolved our way.

MR. HEALY: If I can just elaborate right on that point, someone passed up a question asking, Mitch, what conditions need to be met for major labels to license, just pick an example, Kazaa, with its about 100 million users, and Sharmin is not part of the Grokster appeal, their case is still at the trial court. And I'm kind of asking you to talk about something that's still in litigation. But if you look at their Web site, and I don't know whether you go to Kazaa on a daily basis, but they're promoting things that are authorized to be redistributed. I mean, they are pushing people toward to download things that you have to pay for, and that they not, coincidentally, get a piece of. So if you look at what they're doing today, it's difficult to argue that anything on that site encourages people to do something illegal.

MR. BAINWOL: Their business model was predicated on theft, and there was cover involved in terms of trying to provide a rationale to perpetuate the model. But their revenue is derived not from the selling of the legitimate content, but it's from the advertising, the spyware connect to the draw of the illegitimate content.

MR. HEALY: So the mere fact, if I were to actually develop some skill at coding, and develop a peer-to-peer application, and I put it out there, didn't say anything to anybody about it, and everybody used it to trade copyrighted music, movies, and games, I'm a bad actor? I haven't said a thing to people, I just put the tool out there.

MR. BAINWOL: In my view, you're a bad actor. But this is a situation that --

MR. HEALY: I'm hurt.

MR. BAINWOL: Well, this is a hypothetical, right.

MR. HEALY: Okay.

MR. BAINWOL: But this is a situation the court will resolve. This case is not about that hypothetical. This case is about a business model predicated on theft, where we know from survey work that over 90 percent of the transactions on this model are, in fact, infringement. So we can come up with lots of closer cases, lots of close calls, but this matter is about this particular business and others like it that together present the greatest take in the history of American civilization. We all ought to say this is wrong. You talk about this moral, legal question. I'm not a lawyer; I'm the one non-lawyer on this panel. From the standpoint of basic ethics, basic morality, we all ought to say taking is wrong. And I just for the life of me find it difficult to understand why Gary will put himself in a position where he will say a single legitimate use is enough to justify the existence of the service when hypothetically it could have a billion illegitimate uses, and he would say that still should be protected. And that's really an extreme position.

MR. SHAPIRO: I was quoted there, and I never have said that in my life. What I said was, the Sony Betamax standard of significant non-infringing uses is a good standard which has allowed the technology industry and the content industry to bloom these last

20 years. It's propelled our economy forward, made us a better connected world, if you will, with phenomenal technology, and it's technology that's still coming which is place shifting, time shifting, everything else. That's the standard to use, not whether one copyright owner wants to go through this discovery process to what your intent is.

MR. BAINWOL: You have said repeatedly one legal use, legal product.

MR. HEALY: Gary, I think also, hasn't your organization argued that it's not even an existing use, but a potential use?

MR. SHAPIRO: That's what the Supreme Court says in the Sony Betamax case, because remember when a lot of these products emerge we don't know how they're going to evolve and what's going to happen. I mean, the copying machine, the VCR, all these products can be attacked as to what they were first introduced for. Time shifting even as a concept when the VCR was introduced was not -- that's what it was about, but it was actually playing pre-recorded tapes that developed. And remember what happened to Clear Play. I mean, the present law as it stands today is pretty devastating given the extent of the content industry's ability to bring out armies of lawyers to sue small companies. To change the standard further would be harmful to smaller companies, new technologies, and there are so many out there ready to hit the marketplace. And these small companies are all terrified of the law today with the content industry lawyers. So to change the standard would be much more harmful.

MR. ERICKSON: I mean, in some ways, this is such a classic Washington issue, and when you talk to people in California, and technologists, the things that they're worried about is, how do we compete with China for the next 20 years. It's been said that the language of the Internet in 20 years will be Mandarin Chinese. And most developed countries don't have these theories of secondary liability. Companies are already worried about the litigious atmosphere out there. And the problem with what Mitch is saying is that the rules that he's proposing to apply to Grokster, and Grokster may not be the most sympathetic face out there, I admit, but the rule he proposes before the court in Grokster is the same rule that's going to be applied to the entire IT industry, and there is no way to have that rule applied to the IT industry and not shut down venture capital, and not shut down the development of new technologies.

MR. HEALY: Which part of the government test do you find objectionable?

MR. ERICKSON: This cost/benefit analysis of trying to determine what potential illegal activity may occur and how they can redesign their products to account for that --

MR. BAINWOL: This is not may occur. Listen to the words: The defendant's product is overwhelmingly used, not may be used, overwhelmingly used, and the viability is dependent on the revenue consumer interest generated by that infringement. Then you've got liability.

MR. SHAPIRO: You're a pretty good lawyer, Mitch.

MR. BAINWOL: I just read well.

MR. SHAPIRO: Was that in the Sony Betamax case, that language?

MR. BAINWOL: This is the government brief.

MR. SHAPIRO: Where is that in the Sony Betamax case, though, that language that you are referring to? Is that a new test, or is that the Sony Betamax test?

MR. BAINWOL: This is the government's view that --

MR. SHAPIRO: So, you want the test changed.

MR. BAINWOL: No, I'm not saying that.

MR. SHAPIRO: You just said you support the Sony Betamax test.

MR. GLICKMAN: One thing I would just respond, I think this is not just a Washington issue. And, by the way, Gary, with all due respect, the technology industry is very much involved with lawyers, and campaign events in the Washington community, which they should be, as the content industry is. I don't want to leave some impression that it's over-weighted on one end versus the other. That's just not true, and the facts show otherwise.

But this is a bigger issue than just Washington-based. This has to do with a very fundamental issue about the protection of the creative right and the creative spirit, and how one handles that in the context of modern new technologies of delivering that creative thing. I personally believe that it is an extraordinarily important case for this country. It's not just something that a bunch of Washington lobbyists and lawyers have thought up.

MR. SHAPIRO: So, do you think technology has hurt creativity?

MR. GLICKMAN: Absolutely not, it's helped it, but they go together like the old song Love and Marriage. You can't have one without the other.

MR. HEALY: Another question from the audience, if I could, and this is for Dan. The MPAA has a chance to not make the mistakes the RIAA has made in the last few years. This is a paraphrase of something that the MPAA and studio officials have said numerous times. So the question is, what mistakes did the RIAA make, or I should say the major record labels make that the studios plan not to make?

MR. GLICKMAN: I would say that that is a question that I don't agree with the premise of.

MR. HEALY: Well, it's the friendliest one I have here.

MR. GLICKMAN: The RIAA was out front and was on the frontier of trying to enforce intellectual property rights, and in the process probably irritated some people, and ruffled some feathers. But, at the same time, they were the first to try to protect the interests of their songwriters, and the people who created the music that people love in this country. And we've learned from them in terms of our activities, and I think that they've been very helpful for us. But I'm not plowing any ground by saying that I'm going to repair their mistakes, because I think that, by and large, they've done the right thing.

MR. ERICKSON: The reason it's so important that we do get these rule right when what Mitch wants to apply is going to apply to the entire IT industry is that every new technology that has come down the pike that makes it easier to share content, and makes content more portable, that technology has been sued by the recording industry, or by copyright holders. So, we know it's a litigious atmosphere. We have lawyers to defend our products as well. But when you're talking about human development technologies, if they have a new threat of litigation, that if there is some potential illegal use, and they have to try to figure out if they can, in a cost effective way, design that product to curb those uses or they'll be subject to litigation, and lawsuits is going to be an atmosphere that is going to shutdown the IT --

MR. HEALY: Mitch, in your mind, are you folks advocating that sort of, I think of it as a filtering requirement, but are you advocating that the best available technology to protect copyrights be required to be built in to any new technology that goes out there?

MR. BAINWOL: Let me respond first to Gary. I'm sorry, on your question, the answer is, we do not want to have a mandate. We do think that the responsible thing for a Grokster to do would be to make available, to employ a filtering technology. We know it exists. The irony here is, technology is the answer to the problem, not totally. I mean, this is a challenge that part of the solution is technological. If they would deploy filtering, then, in fact, they would become legitimate, that would be great.

MR. HEALY: That's really the responsible thing to do, or something that they need to do or else they will see you in court?

MR. BAINWOL: Well, let's see the way this decision plays out. I think it's a good idea. Again, we're not talking about a mandate.

MR. ERICKSON: Filtering technologies, it's not the answer, it's not close to the answer because they don't work, they won't work. If you read this computer science brief that was submitted in the Grokster case, the folks that developed the Internet, they will tell you, the entire architecture of the Internet is designed to get around filtering technologies. It's about the efficient distribution of material. The only way to filter content effectively is at the end points of the consumers, at the consumer's terminal. You

can't build in filters into the structure of the Internet and expect that they're going to work.

MR. HEALY: Which is why people like SNOCAP are designing the clients, which is at the end point, so that they do the filtering. I think the SNOCAP people would agree with that argument, but they would come back and say, that doesn't render filtering ineffective from the word go, it just means you have to be careful how you do it.

We're running out of time, but I do want to ask one more friendly question from the audience, and skate past the first half of this if you can. Where the RIAA or the MPAA are able to dictate what technologies are available, what is the legitimate independent artist to do if he or she wants to distribute using the best technologies available? So, if we cut out the first half of that, isn't what is at issue here, because you hear this argument over and over, control over distribution, because there are plenty of small artists and small labels that like the networks that you folks consider polluted. They think that those are great ways to reach their audience, because they can't do it through the mechanisms that you have access to, like radio.

MR. BAINWOL: The answer is simple, it comes down to the word choice. If an artist wants to give up their rights, or they want to take the bet that they're going to be able to tour at some point, and derive revenue that way, or merchandise, that's their prerogative, and they should be able to do that. But, that choice should not be made for the artist.

Last night I was with three songwriters from Nashville, you know, they don't get to tour, they don't get merchandise revenue, what they get is revenue from sales, that's fundamentally it. Those guys, they write a song, it's pure genius, it affects our lives, maybe a song that you remember for decades, they're not getting compensated. Half of the songwriters in Nashville are gone. So it comes down to choice. If you want to give it up and you want to place a bet that you're going to derive revenue another way, that's your prerogative. Go for it. That's what America is all about. But the choice should not be made for you.

MR. GLICKMAN: No further comment on that.

MR. HEALY: Let me ask one final question. We've talked all throughout the day about the apparent tension between different forms of intellectual property. I know you don't like that phrase, Gary, but I have to use it, because the technology community has very important intellectual property, as do the creative community. I'm wondering if there's something inherent there, some inherent tension in your minds as different aspects of creators, you have technical creators, artistic creators, you said they go together like one hand to the next, but isn't protecting one kind of intellectual property, in essence, saying to another kind of intellectual property, you have to take a backseat, you have to put these considerations before your own?

MR. SHAPIRO: Well, you know, it's interesting that patent and copyright laws started out with about the same term, and the copyright and patents kind of stays around the 18-20 year, often changes a year or two there by congressional mandate. But copyright has only been extended and extended, so it's basically a perpetual monopoly. But, let's remember, the reason that patent has kind of stayed around the same time is because there's benefits, you exploit the patent while you can, and then there are benefits to society in the fact that they have that available to build upon. We've gotten to the stage with our copyright law now where it's difficult to build upon existing copyrights because they last forever, and also just for figuring out who owns the copyright has become real problematic in a lot of cases.

I think we've gotten to the point now where the copyright laws are so strong, where you have the monopoly copyright going on at least longer than I'll ever live, it's life plus 75 years, and you have all these technical restrictions that are starting, and you have the other penalties which are getting bigger and bigger to the point of intellectual property, if you use intellectual property without authorization, it's worse than stealing a physical product. It's gotten so distorted, and so out of balance that we've lost the public's interest. We've lost the right to public access. We've lost the opportunity to build a culture and create new products. We've lost the concept of, this is consumers we're talking about here. And we're putting all these Rube Goldberg things that even if our industry and the motion picture or RIAA could agree, we're creating Rube Goldberg devices that are driving consumers crazy.

And what I think we could do is, I would like to make the offer I made at the start of the day, let's agree on the language, let's agree on how we're going to educate people about what's morally right, and keep it away from the government if we can, and let's agree on at least informing consumers as to what they can and cannot do with the standards that we create, if we can create standards together. So, whether or not a product is copyable, or how many times it can be copied, because we're creating a situation where we're going to really frustrate our consumers, and I don't think it's healthy.

MR. GLICKMAN: I would just make a couple of things. One, you asked about the different creative juices, let's say, on the software side. All you have to do is to go to many other societies in the world that do not respect copyright at all and you see that anybody's innovative work, whether it's software or it's an automobile, or it's a pharmaceutical product, is treated the same way as music or movies are. It's not restricted at all. So we are all in this together. This is not such a massive divide as I think that has maybe been articulated either today or in places before.

We have technology moving ahead very fast, and we have the desire of the creator to be protected in this process so that they can continue to write music, play music, and do movies. And this is an inherent tension that is going to be partly resolved in this case, and because we believe that this case is based upon theft. But the issue will ultimately have to be decided by us working together, I do agree with that. This cannot

be a war forever, because if that's the case, people will get confused, and it will be a pox on all of our houses.

MR. ERICKSON: Well, I mean, clearly Dan is exactly right. And as I said before, my hope is that this debate is either a one or two-year debate, and that these markets will mature, technologies will mature, the markets will mature, and that the win/win situation is that both these industries can do very well over the next coming years by synergizing these technologies and the content in a way that provides consumers with cheap, affordable, portable content in a way that they've never had before, and consumers will respond to that.

MR. HEALY: Mitch?

MR. BAINWOL: Yes, I agree with that, too. The original question was about balance, and that's what we're really seeking. We're seeking effective protection as envisioned in '84 under Betamax. And right now, with the 9th Circuit decision on Grokster, that balance has been totally distorted, and there is no effective protection. Our lives, again, are intertwined. Tech and content together can enrich this society, but if this balance is thrown out of whack, as it has, we've got a real problem.

MR. HEALY: On that harmonious note, I see that the bodyguards are here, and I want to thank very much our panel members, Mitch Bainwol, Chairman and CEO of the Recording Industry Association of America; Markham Erickson of the NetCoalition; Dan Glickman of MPAA; and Gary Shapiro of the CEA. Thank you.

(Applause.)

MR. SHAPIRO: To paraphrase Ronald Reagan, I paid for this microphone, so I get the final word. I want to thank everyone for joining us today. We hope you got some good information, it's been a good dialogue. I want to thank my fellow panelists. They did exert some courage.

The question is, what do we do now? Where do we go from here? I began the day by calling for a change, a change in the language that we use in this discussion of copyright versus technology, a change in some of the assumptions of what have become accepted facts, and a change in defining the terms of the debate. And to that end, I think these discussions today have been useful. But I also want to present one other thing. I want to present to you today the Declaration of Innovation Independence. This is a document that declares the brief of CEA and others about protecting intellectual property while not stifling innovation. It declares the support which I think we heard from everyone on this panel for the Betamax principles, principles that have allowed innovation to flourish for 20 years. And it declares our strong support for recognizing and embracing the fact that digital technology has created a phenomenal renaissance of creativity and allowed the democratization of creativity.

So we're asking anyone who wants to sign on can sign on the goals outlined in the declaration. It's been signed on at this point by the Electronic Freedom Foundation, the American Conservative Union, the Home Recording Rights Coalition, the American Library Association, as well as obviously the Consumer Electronics Association. We would urge you to look at it, we welcome your feedback on it. So this concludes our day, and on behalf of the Consumer Electronics Association, the staff and our board, and our conference partners, I would like to thank you so much for your time and for coming today.

(End of event.)