

Before the
U.S. House Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection

“Editing Hollywood’s Editors: Cleaning Flicks for Families”
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For
The Electronic Frontier Foundation

On behalf of the Electronic Frontier Foundation, I appreciate the Subcommittee’s invitation to appear today. As the Subcommittee is well aware, the shift to digital media has created new tensions between ordinary Americans and copyright holders. We saw this come to a head in the recent lawsuit of *Huntsman v. Soderbergh*. At issue in that case was a long-standing American tradition of parents exercising control over the way their children watch movies versus the power of copyright owners to control our viewing experience. In the past, parents had exercised this control either by making wholesale choices about what they buy or spending the time and energy to sit and watch every program with their child. Today, however, companies like CleanFlicks and ClearPlay are offering parents products and services to help them more efficiently protect their children. The question is, how does and should the law treat these companies?

Many copyright owners have a very limited concept of the rights of parents and consumers to customize their viewing experience. They believe that the law should allow them strict control over home movie watching. Yet copyright law has never provided such broad control. In fact, consumers have always been able to customize their purchases. For example, when you buy a car, you can put whatever tires you like on it or paint it any color you wish. In your home, you can put whatever sheets or pillows you’d like on the bed. If your family wants to play a game of Monopoly or Trivial Pursuit by a

different set of rules, they can do so without the game maker's permission. And when you put your kids to sleep at night, you can choose to read whatever part of their favorite story you wish, again without having to ask permission of the story's author. In fact, some of you will remember that this was exactly the plotline in the popular film, *The Princess Bride*, where the grandfather entertains his sick grandson by reading a book aloud and skipping the boring parts. Sort of a pre-digital Clearplay, if you will.

The digital era has complicated this matter. Every computer, every iPod, every cell phone is a copy machine of sorts. When copies are made, copyright law controls much of what you can and can't do with those devices. But consumers should not lose their freedom to customize their experience just because they have decided to step forward into the digital world. We can and should respect the copyrights of the media makers and, at the same time, preserve the rights of parents to make judgments about what is appropriate within their homes and for their families.

Consider the example of searching and viewing Internet websites. Today, parents have a wide variety of options for customizing their children's Internet experience. There are filtering tools such as Google's SafeSearch that limit what information is available when children go online. While we at EFF have serious objections when these tools are made mandatory, it's a very different matter when parents use them at home to provide customized viewing options for children.

Imagine, however, if the rule that the MPAA wanted in the *Huntsman* case applied to online content. Webpages are just as copyrightable as movies or music. Applying the studios' legal theory in *Huntsman* to the Internet, this might prohibit parents from customizing or filtering their children's Internet experience, just as the MPAA

wanted to prohibit them from customizing or filtering their children's movie viewing experience. It might also prohibit companies from offering customizing technologies for web browsing, just as the MPAA wanted to prohibit CleanFlicks and ClearPlay from offering such technologies for movie watching.

Thankfully, Congress has repeatedly endorsed market-based mechanisms as the proper way for parents to avoid content they don't like without intruding on the preferences of others. This has also fostered a healthy market in tools for parents to use. Without such devices, parents are almost powerless to provide supervision for their families in the digital world. Yet copyright law currently threatens the development of many such tools for the home viewing environment. For example, in the *Huntsman* case, the MPAA raised the specter of Section 1201 of the Digital Millennium Copyright Act, implying that *any* tool used to copy or modify the contents of a DVD is per se illegal, even if those actions are legal under the test for fair use and serve lawful purposes, such as backing up one's DVD collection or providing a lawfully purchased edited version of a movie for home viewing.

Fortunately, a strong and practical solution to part of this problem is pending before Congress. H.R. 1201, the Digital Media Consumer's Rights Act of 2005 (DMCRA), allows both individuals and companies to access and modify the contents of a DVD for lawful or fair uses only. There can certainly be no more lawful or fair use than to help parents customize their children's home movie viewing experience. H.R. 1201 would not only allow parents to do this but would also allow companies to make the products and services that parents depend on to accomplish this technologically.

Again, thank you, Mr. Chairman, for the opportunity to appear before the Subcommittee to address these important issues. We appreciate being asked to be here and look forward to working with you and your staff as you examine these issues further.