

July 11, 2006

The Honorable Arlen Specter  
Chairman  
Committee on the Judiciary  
Washington, DC 20510

The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
Washington, DC 20510

Dear Chairman Specter and Ranking Member Leahy:

On behalf of the Consumer Electronics Association and the Home Recording Rights Coalition, I write to urge you not to schedule a markup of S. 2644, the Perform Act, in July in your Committee.

In late April, we submitted a statement for the hearing record, expressing our concern that the proposed legislation would limit longstanding consumer fair use practices and would hobble the use of lawful devices traditionally used by consumers in the privacy of their homes. We then participated in both roundtable discussions on the legislation and filed extensive comments in response to questions posed by staff.

Notwithstanding our efforts and other interested parties to address the issues raised in the Perform Act through the roundtable discussions, the recording industry apparently decided that another branch of government was the preferred alternative for securing relief. Just two weeks after the hearing in your Committee, the recording industry filed a lawsuit against XM Satellite Radio, raising many of the same issues addressed in the Perform Act.

That suit raises core questions about the meaning of protections already in U.S. law pertaining to the use of recording devices entirely within the home. Under the circumstances, it seems particularly inappropriate for the Congress to even consider further measures addressed to the in-home function of lawfully obtained and operated consumer home recording devices.

Moreover, apparently not content with advocating for a bill in your Committee and filing a lawsuit in the courts, the recording industry also has sought potentially wide-ranging measures from the Senate Commerce Committee (and the House Energy and Commerce Committee) through so-called "audio flag" legislation.

As a result, the bill reported by the Senate Commerce Committee would authorize the Federal Communications Commission to adopt regulations that would deny consumers the ability to make fair use of lawfully acquired music from new radio services and from existing satellite radio services.

In our view, the Judiciary Committee should not move forward with any legislation until staff have had an opportunity to address the outstanding issues that had been under discussion during the roundtable meetings on the Perform Act, as well as the implications of the other ongoing initiatives for an orderly and considered approach to copyright and fair use issues and principles within your Committee's jurisdiction.

In the absence of any showing of harm to the recording industry from the new satellite radio products or HD radio services and given the recording industry's own apparent skepticism toward the legislative process, we trust that the Judiciary Committee will not see any compelling reason to move forward with a markup this month.

We look forward to continuing to work with you and your staff on the Perform Act and to assist you in your assessment of the implications of proposed audio flag legislation. Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Shapiro". The signature is fluid and cursive, with the first name "Gary" and last name "Shapiro" clearly distinguishable.

Gary Shapiro  
President and CEO