

Summary of testimony of Crossan “Bo” Andersen, President  
Video Software Dealers Association (“VSDA”)  
On behalf of VSDA

VSDA is the national trade association representing home video retailers and distributors. The majority of VSDA’s members are companies operating video rental stores, sometimes referred to as “rentailers,” who purchase copies of motion pictures and other audiovisual works (including video games) for rental, either in videocassette or digital DVD format. VSDA members are in a unique position to comment on the first sale doctrine, and the implications of Section 109 of the Copyright Act, because home video rental would not exist today but for the first sale doctrine and Section 109.

In 1983 and after the Supreme Court validated the Betamax technology in 1984, some motion picture companies attempted to shut down the home video rental market – or at least gain control over it – by appealing to Congress to create an exception to Section 109 to prohibit the rental of copies of motion pictures and other audiovisual works without the consent of the copyright owner. As a direct result of the vision of thousands of early video rentailers, who were more often seen as opportunists than entrepreneurs, the home video market was born.

The dire warnings of the motion picture copyright owners proved to be hyperbole. Within a short time, studio revenues from the independent home video market exceeded their combined revenues from the theatrical box office and all other sources of licensing revenue. Moreover, this failed attempt to restrict the first sale doctrine resulted in the furtherance of the primary goal of copyright law: “To promote the Progress of Science and the useful Arts” by creating a new and robust economic incentive for creative authors and artists to produce and disseminate their works. More importantly, it brought economical motion picture entertainment into homes in virtually every neighborhood.

As the devices for playing digital works move from simple play-back devices to more sophisticated interactive ones, copyright owners too often have seized upon the opportunity to control through technology what they cannot control by law. The lessons learned over the last twenty years are soon forgotten, as technology allows copyright owners to prevent the very activity specifically reserved to the owners of lawfully made copies under Section 109 without the consent of the copyright owner.

Based upon this history and concrete industry experience, Mr. Andersen’s testimony will illustrate how Section 109 has been used in the home video industry to broaden distribution of and consumer access to copies of audiovisual works with full remuneration to the copyright owners, and to posit how consumers’ beneficial enjoyment of Section 109 may be harmed under emerging business models designed to circumvent Section 109. He will illustrate that Section 109 has not only created the most lucrative source of revenue for copyright owners in motion pictures, but at the same time has created the most affordable way for American families to enjoy the commercial-free full-length motion picture viewing experience. Mr. Andersen is prepared to give examples of present and past efforts to control, limit or prohibit subsequent distribution through exclusive dealing arrangements, restrictive licenses, notices or warnings, and pricing. He will postulate and query how access control technology righteously may be deployed to protect against piracy and yet give consumers and retailers maximum opportunities to use and market copies which copyright owners have already sold and for which they have been fully compensated.