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CONSERVATIVE
UNION

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Dear Congressman,

We write in response to lobbying from some quarters calling on Congress to enact legislation to "#savefiltering" by "updating" the 2005 Family Movie Act. We do not write in opposition to "filtering," as explained in more detail below. In fact, we support the efforts of lawful filtering services to give families more options that comport with their values. Rather, we urge more careful scrutiny of the claims of those calling for such an update, concerned that what we see here is really a case of wolves in sheep's clothing, advocating to undermine important principles of property rights and free markets under the banner of protecting family friendly "filtering" services.

As you may know, Congress passed the Family Movie Act to make it easier for families to avoid portions of content they find objectionable while watching movies and television programming in their homes. At the same time, Congress was rightly concerned that these protections not have the ancillary effect of undermining fundamental protections of copyright law or creating loopholes for would-be infringers that would interfere with the growth of the legitimate market for digital entertainment content. The result was a narrowly tailored provision in the Copyright Act designed, according to its authors, "to empower private individuals to use technology to skip and mute material that they find objectionable in movies, without impacting established doctrines of copyright or trademark law." This provision thus clarifies that "making imperceptible ... limited portions of audio or video content of a motion picture," under specified conditions, does not constitute copyright infringement.

For more than a decade since the enactment of the Family Movie Act, there have been no disputes or litigation over the operation of filtering services that enable individuals to use technology to automate the skipping and muting of content they consider offensive in the home. Companies like ClearPlay have offered filtering services for use in connection with legally acquired DVDs and BluRays, as well as with licensed streaming content. TVGuardian provides a "foul language filter" for television programming received over the air or through cable and satellite services. Ufilter is a more recent entrant into the market, claiming to do the same for streaming services like Netflix, Hulu and Amazon. All of these services exist in a market enabled by the Family Movie Act, and we are not aware that any have called for Congress to intervene further in this market.

The sole exception is VidAngel, the filtering-enabled streaming service that was recently shut down by a court, not because of its filtering activities, but because it was copying DVDs and BluRay discs to cloud servers and using those unlicensed copies to stream movies and television shows for \$1 in direct competition with licensed streaming services, but without a license from a single copyright owner.

It is ironic that a company purporting to champion family values instead operates in violation of the Ten Commandments: Thou Shalt Not Steal.

We support a vibrant marketplace for technologies that allow families to control the content that comes into their homes. What we do not support are efforts to mask clearly unlawful activities beneath the family friendly banner of "filtering." VidAngel and its surrogates claim the need to update the Family Movie Act to accommodate filtering in connection with streaming services and to counter a "war on filtering." But as much as they want to make their dispute about filtering, they appear to be fighting a nonexistent war as a ruse to avoid the real issue of copyright infringement.

We would expect copyright owners to bring infringement claims against any company doing what VidAngel does, regardless of whether the infringer also offers filtering. The Family Movie Act already allows filtering in connection with licensed streaming services, and plaintiffs in the VidAngel litigation repeatedly state that they do not object to lawful filtering services. That is why ClearPlay—VidAngel's leading competitor in the filtering market—is not the subject of litigation. ClearPlay has been in the market for filtering in connection with streaming services for years and has indicated plans to roll out additional new services this year, as is its right.

It is also telling that ClearPlay has not joined with VidAngel in calling for changes to the law, instead telling the court in the VidAngel litigation that "[t]he cause of filtering is not helped by VidAngel's unlawful behavior, especially coupled with incessant undermining statements towards those that are lawfully and legally filtering content."

Congress anticipated just this kind of mischief and drafted the law to nip it in the bud. As the authors of the Family Movie Act explained, "an infringing transmission of a performance to a household [is] not rendered non-infringing ... by virtue of the fact that limited portions of [the motion picture] are made imperceptible during such performance or transmission," and "the Act does not provide any exemption from the anti-circumvention provisions of section 1201 of title 17."

We see no reason to upset this balance, which recognizes the importance of copyright and contracts in supporting a robust market for video streaming. Nor do we see any reason for the kind of incursion into the market being urged by VidAngel, which seeks to regulate the terms of video distribution agreements and impose technology mandates on internet streaming services. These proposals are both a solution in search of a problem and fundamentally inconsistent with conservative values.

VidAngel should not be allowed to wrap itself in saints' garb, cloaking its behavior in the mantle of family values while undermining the core conservative principle of property rights and free-market principles that support a vibrant creative economy. While we, too, find some movies and TV shows inappropriate for families, the solution lies in innovative products and services legally deployed in the marketplace—not congressional mandates which undermine core Constitutional rights and interfere with existing, well-functioning markets.

Sincerely,

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