



CONSUMER FEDERATION OF AMERICA

Congress Clears Anti-Consumer Bankruptcy Bill

Years spent fending off anti-consumer bankruptcy "reform" came to an end in April, when Congress cleared and the president signed legislation that will make it more difficult for families hit by genuine misfortune to make a fresh start financially.

"The American tradition of bankruptcy has always allowed families confronted by crushing debts to get back on their feet again and become productive members of society," said CFA Legislative Director Travis Plunkett. "This laudable tradition has been swept aside by this punitive legislation."

Instead of offering debtors a fresh financial start under Chapter 7 of the bankruptcy code, the means test at the heart of the bill will force more debtors to file under Chapter 13, which requires a court-ordered repayment plan. This despite the fact that two-thirds of such plans already end in failure.

In addition, the bill introduces new categories of non-dischargeable debts, affords bankruptcy judges little discretion to waive means test requirements, increases filing costs and paperwork, makes debtors more vulnerable to eviction, and makes chapter 13 plans to save homes and cars more difficult.

"The creditors who convinced Congress to pass this bill have claimed that it simply targets the relatively small number of affluent individuals who abuse the bankruptcy system," Plunkett said. "Nothing could be further from the truth."

Loopholes for Wealthy Debtors Remain

In fact, the legislation retains gaping loopholes that will allow corporate executives and affluent debtors to escape many of its restrictions.

Not only will the homestead exemption allow them to shelter multi-million-dollar homes in bankruptcy, but the asset protection trust loophole will also let them keep substantial financial assets out of the reach of creditors. Meanwhile, executives facing bankruptcy because of business debt will be exempt from the means test, although those facing bankruptcy because of medical bills will not.

"The bill's nominal consumer protections, such as new credit card disclosures, provide vague and misleading information that will be virtually useless to borrowers trying to make responsible financial decisions," Plunkett said.

The bill also requires debtors to undergo credit counseling before filing. "Given the well-documented abuses that exist today in the credit counseling market, this requirement could force millions of consumers into the hands of unscrupulous credit counseling agencies," Plunkett said.

During Senate consideration, Democratic

opponents of the bill offered numerous amendments to soften the bill's impact on average Americans, close loopholes, and rein in abusive lending practices.

Unified Republican opposition and the cooperation of some Democrats ensured their defeat, however.

"Senators Kennedy, Durbin, Feingold, Dodd, and Akaka in particular tried hard to make this bill work better for vulnerable families hit by genuine misfortune, but they were voted down," Plunkett said.

(See the box on this page for a list of pro-consumer amendments that were defeated on the Senate floor.)

Pro-Consumer Amendments Defeated

Among the amendments defeated was the amendment by Sen. Chuck Schumer (D-NY) to prevent violent protestors, including abortion protestors, from using bankruptcy to escape civil fines and judgments. In previous

congresses, that amendment had doomed the legislation, when the Senate refused to pass the bill without the measure included and the House refused to pass the bill with it.

This time, however, the amendment fell on a 46-53 vote. Soon after, the Senate voted to limit debate on the bill. It then passed on a 74-25 vote.

House leaders pursued an even more rigid amendment strategy, allowing no amendments to be offered. The bill passed the House on a 302-126 vote.

"CFA applauds Representatives Conyers and Nadler for raising issues like the impact of the bill on members of the military and debtors with medical debts," Plunkett said. "It is unfortunate that they were not allowed to offer amendments on these important issues on the floor."

"Now that Americans in bankruptcy will have to pay more back to creditors, they have a right to expect that credit card companies will lower their interest rates and fees," Plunkett added. "We will be watching credit card companies closely to see if they will become more responsible corporate citizens in return for this unprecedented gift from Congress."

However, he cautioned that, by making it harder for consumers to seek desperately needed protection from abusive creditors through bankruptcy, the bill is likely to encourage abusive lending.

"Predators marketing dangerous 'bankruptcy alternatives,' such as debt settlement and debt elimination, are lying in wait for consumers with crushing debt loads who will now have a harder time getting into the bankruptcy system," he said.

On the Web

www.consumerfed.org/bankruptcy_bill_release.pdf

www.consumerfed.org/bankruptcy_House_floor_debate_05_release.pdf

Pro-Consumer Amendments Defeated in the Senate

Senate Democrats offered a number of amendments during floor debate designed to: soften the bankruptcy bill's impact on average families who find themselves in genuine financial distress; close loopholes that allow wealthy debtors to abuse the system; end abusive lending practices that help drive people into bankruptcy; and end abusive practices by businesses in bankruptcy.

✓ Amendments to Soften the Impact on Average Families

Sen. Edward M. Kennedy (D-MA) offered an amendment to exempt from the means test debtors whose financial problems were caused by serious medical problems. Defeated 39-58.

Sen. Kennedy offered an amendment to exempt debtors whose financial problems were caused by failure to receive alimony or child support, or both, from means testing. Defeated 47-53.

Sen. Richard Durbin (D-IL) offered an amendment to exempt service members and veterans from the means test, to prevent payday loan companies and other lenders that charge usurious interest rates to service members from collecting on those loans in bankruptcy, and to allow service members to shield their homes from bankruptcy based on the law of the state where they resided before entering the military. Defeated 38-58. The Senate later adopted 99-0 a weaker compromise amendment to exempt disabled veterans from means testing in very limited circumstances.

Sen. Durbin offered an amendment to ensure that the means test requirements would not be imposed on debtors whose incomes are below the state median. Defeated 42-58.

✓ Amendments to Close Loopholes for Wealthy Debtors

Sen. Kennedy offered an amendment to prevent homeowners from shielding homes with more than \$300,000 in home equity from bankruptcy under certain state laws. Defeated 47-53.

Sen. Charles Schumer (D-NY) offered an amendment to limit the ability of wealthy debtors to shield assets in asset protection trusts. Defeated 43-56. The Senate instead adopted 73-26 a substitute

offered by Sen. Jim Talent (R-MO) that allows the trusts to be shielded unless the virtually impossible to establish standard of "intent to defraud" is proven.

✓ Amendments to End Abusive Lending Practices

Sen. Daniel Akaka (D-HI) offered an amendment to require credit card billing statements to disclose how much consumers would pay and how long it would take them to pay off their debt making only minimum payments. Defeated 40-59.

Sen. Mark Dayton (D-MN) offered an amendment to limit the amount of interest that can be charged on any extension of credit to 30 percent. Defeated 24-74.

Sen. Durbin offered an amendment to discourage predatory mortgage lending by prohibiting creditors who violate the Home Ownership and Equity Protection Act from collecting on the illegal loan in bankruptcy. Defeated 40-58.

Sen. Akaka introduced an amendment to prevent creditors from collecting in bankruptcy if they do not have a policy of waiving additional interest for all debtors who participate in credit card consolidated payment plans administered by nonprofit budget and credit counseling agencies. Defeated 38-61.

Sen. Christopher Dodd (D-CT) offered but withdrew in the face of certain defeat amendments to prohibit extensions of credit to underage consumers and to require credit card companies to provide consumers with prior notice of interest rate increases.

✓ Amendments to End Abusive Practices by Businesses in Bankruptcy

Sen. Patrick Leahy (D-VT) offered an amendment to strip a provision from the bill that allows investment bankers who advised a company before it declared bankruptcy to serve as "disinterested" consultants during bankruptcy. Defeated 44-55.

Sen. Durbin offered an amendment to protect employees and retirees from corporate practices that deprive them of their earnings and retirement savings when a business files for bankruptcy. Defeated 40-54.

Consumer Protection Key To Economy's Health

The consumer protection mission of the Federal Trade Commission not only helps consumers, it also helps maintain the consumer confidence that is essential to the health of the economy, FTC Chairman Deborah Platt Majoras said in a Consumer Assembly '05 keynote address.



FTC Chairman Deborah Platt Majoras

"When consumers are scammed, they don't just lose their money. They lose faith," she said. "The nation cannot afford to have our consumers lose confidence in the marketplace."

Majoras provided a broad overview of the consumer protection division's law enforcement, education, policy, and research initiatives.

Several of the issues before the agency are being addressed through most if not all of these approaches.

In the area of credit, for example, the agency is currently litigating cases involving

deceptive practices in the area of credit counseling, debt management, and debt negotiation, Majoras said.

At the same time, the agency is writing rules and conducting research on credit-related issues as part of its implementation of the Fair and Accurate Credit Transactions Act.

Still to come on that front are a pilot study in which the agency will interview consumers and examine their credit reports "in an effort to come up with a workable plan for a national survey of credit report accuracy" and a study of credit scores that will include an "extensive review" of insurers' underwriting and loss data, Majoras said.

FTC Addresses Technological Convergence

Similarly, agency initiatives addressing technological advances cut across its various consumer protection strategies.

On the one hand, the agency is litigating enforcement cases involving spam and spyware. At the same time, it is studying consumer protection issues that arise as a result of the convergence of communica-

tion and information technologies, including those associated with Voice over Internet Protocol.

"The goal of the convergence project is to ensure that consumers, faced with a dizzying array of new and converging technologies, can be confident that these industries are held to the same level of truthful and accurate marketing as other industries, can turn to the FTC for helpful consumer education materials, and can rely on the FTC to ferret out bad actors and put a stop to deceptive and unfair practices," she said.

In keeping with that goal, the FTC has asked Congress to eliminate the exemption from the FTC Act for common carriers subject to the Communications Act.

"This outdated exemption makes it more difficult for the FTC to ensure that consumers are fully protected from deceptive and unfair practices as these communications and information technologies converge," she said.

Initiative Targets Child Obesity

Majoras also announced a new research

initiative "that seeks to respond to the growing concerns over the alarming increase in childhood obesity."

"In seeking to find a fix for childhood obesity, many shine the spotlight on the marketing of food to children," she said. "Others argue that food advertising does little more than shift the brand of popular drinks, snack foods, or cereals that children eat."

"I doubt that we can fully resolve that debate, nor do I think we need to," she said. "We should all be able to agree that advertising can be part of a solution."

The initiative will be launched with a joint FTC and Department of Health and Human Services workshop this summer to "take a snapshot of the current state of food and beverage marketing to children, review existing self-regulatory efforts, and discuss best practices by companies."

"I doubt that workshop participants will fully resolve these issues in two days, but ... this is a discussion we all need to start," she said. "I am optimistic that a constructive dialogue can occur."

Advocates Must Respond to Changing Economy

Consumer advocates working on behalf of lower income consumers must respond to changes in public attitudes about money, changes in the marketplace, and changes in the nature of competition, National Consumer Law Center Executive Director Will Ogburn said in a keynote speech on "The Consumer Movement and Lower Income Consumers."

Ogburn, who focused on issues related to credit, noted that the public attitude toward credit has changed dramatically in just a few decades. In the past, individuals borrowed for one of two purposes, to invest in a home or an education or because of an emergency.

"Today we know the attitude is far different," he said. "There are no cautions on when to use credit. Credit is now viewed as a right."

"This attitude is ubiquitous," he added. "The offers pour into our homes," and low income consumers are often "especially and tragically targeted," he said.

This change in attitude is reflected in our public policies, he said. "You can't have effective public policy if you've lost on the message. You can't obtain a fair approach to personal debt if the premise is that virtually all credit is good."

Consumer advocates need to address "attitudes toward credit," he said. "That's a project waiting for leadership and waiting for support."

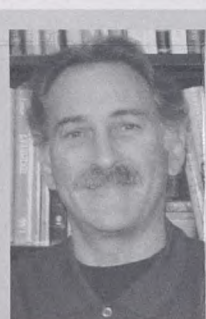
Advocates Must Act in a National Marketplace

Another important trend has been the move from a local marketplace to a national marketplace for credit, he said.

"Today, most of the scams, most of the



NCLC Executive Director Will Ogburn



University of Utah Professor Robert Mayer

abuses, most of the unfairness are financed nationally," he said. "We've gone from a local credit market to a national credit market, and our advocacy has to change as well."

"Now more than ever, local success is at the mercy of national policies. So we need to fight locally, but we also need to fight the fight nationally," he said.

The move from a local to a national marketplace brought a lot of improvements, particularly in reducing discrimination in the extension of credit, Ogburn said.

"The big national institutions were fairer. They were more consistent. They were more cautious. And they were better about abiding by the law than local creditors," he said.

"But you can have too much competition," he added. "Too much competition can bring ruin. With usury ceilings gone, public attitudes radically different, pre-emption wiping out consumer protections, we are seeing dramatic changes."

He cited as examples the growth of payday lending, the fact that 72 percent of families with incomes less than \$10,000

are carrying credit card debt, the growing practice among banks of using bounce loans.

"To work well, competition needs boundaries," he said. "Predatory lending is a great example. Creditors get incredibly high interest rates with an array of excessive charges not because the marketplace requires it, but because they can do it."

But "excesses breed reaction," Ogburn warned. "Industry excesses today will do that again."

"Our job as advocates is to expose those excesses loudly and clearly," to fight pre-emption, and to preserve consumer protections, he concluded.

Academic Research Can Benefit Advocates

Academic research offers numerous potential benefits for consumer advocates and educators, University of Utah Professor Robert Mayer said in a Consumer Assembly keynote speech.

"If you are an advocate, there are at least two good reasons to be interested in academic research," he said. They are curiosity – "tell me something I don't already know" – and pragmatism – "tell me something I can use."

Four types of academic research meet these two criteria:

- research on consumer problems "that exposes or measures the intensity of consumer problems;"
- research on consumer problems "that explains why the problems exist;"
- research that projects policy impacts and compares alternatives; and
- research that "reevaluates the effectiveness and the impacts of consumer policies."

Mayer cautioned advocates, however, that

"you need to be very careful relying on how research is reported in the media. You need to go back to the original research if you really want to understand it."

CFAnews

Consumer Federation of America

1424 16th Street, N.W., Washington, D.C. 20036

(202) 387-6121 • www.consumerfed.org

President: Kenneth McEldowney
Chairman: Sen. Howard M. Metzenbaum
Executive Director: Stephen Brobeck
Research Director: Mark Cooper
Public Affairs Director: Jack Gillis

Director of Consumer Protection: Jean Ann Fox
Legislative Director: Travis Plunkett

Associate Director: Nancy Register
Director of International Issues: Mark Silbergeld

Director of Administration: Betty Leppin
Director of Financial Education: George Barany

Public Policy Associate: Diana Neidle
Conference Manager: Adele Ellis
Project Manager: Mel Hall-Crawford
Assistant General Counsel: Rachel Weintraub

Administrator: Miguel Carpio
Senior Researcher: Patrick Woodall
Executive Assistant: Lydia Grogan
Project Coordinator: Michelle Watts
Office Assistant: Milena Carpio
Legislative Assistant: Anna Pettrini
Financial Education Associate: Autumn Pickhoyer

CFA's Center for Insurance Policy
Director of Insurance: J. Robert Hunter
Life Insurance Actuary: James H. Hunt
Insurance Counsel: Kathleen O'Reilly

CFA's Food Policy Institute
Director: Carol Tucker Foreman
Health and Safety Associate: Chris Waldrop

CFA's Center for Housing/Credit Policy
Director: Allen Fishbein

CFAnews Editor: Barbara Roper

CFAnews is published eight times a year. Annual subscription rate is \$25 per year.

© Copyright 2005 by Consumer Federation of America. CFA should be credited for all material. All Rights Reserved.

Design & Typeset by: Dahlman/Middour & Nolan Design

Senators Outline Legislative Priorities

Consumer advocates face an uphill battle given the current environment of unprecedented deficit spending and bitter partisanship, Sen. John McCain (R-AZ) said in a Consumer Assembly '05 keynote address.

"We have our work cut out for us in the weeks, and months, and years ahead," he said.

Sen. McCain, who spoke on a wide range of issues from cable rates to global warming, was one of three senators who laid out their legislative priorities for the 109th Congress in keynote addresses at the annual assembly. Also on the agenda were Sen. Charles Grassley (R-IA) and Sen. Ron Wyden (D-OR).

Even as more and more Americans subscribe to cable or satellite television, rates continue to climb at four to five times the rate of inflation, Sen. McCain said.

"Is cable a necessity of life? Perhaps not," he said. But, at the same time, cable company profits "are at an all-time high. They're not hurting," he said.

Sen. McCain suggested reining in industry practices that force consumers to purchase cable networks they don't want. "Why should a widow on fixed income have to pay for ESPN?" he asked.

Asked about the prospects for his auto safety bill - which died last year when House and Senate conferees were unable to reach agreement on the highway bill - Sen. McCain said its prospects are shakier this year, since he no longer chairs the Commerce Committee.

"We're going to do everything we can," he said. "I think if we have to on the floor we can win some votes."

Sen. McCain also emphasized the need to do something about global warming. "Climate change is real. Climate change is devastating," he said. "We have to do something."

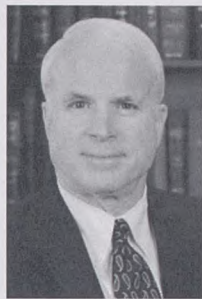
The key is to convince business and industry that it is in their best interests to develop the technology to deal with the problem, he said.

Finally, entitlement programs must be reformed, Sen. McCain said. While he noted that the problems facing Medicare are more serious, he endorsed the president's decision to start with Social Security reform.

The program is undeniably in financial trouble, he said. "It is not a question of whether Social Security is going to be in trouble, it is a question of when," he said.

Furthermore, the problems facing Medicare and Medicaid are far more complex. "When you start talking about Medicare and Medicaid, then the complexities are phenomenal."

If Congress could fix Social Security, the momentum might be enough to carry them through the tough decisions that have to be made regarding the two health care programs, he said.



Sen. John McCain

Drug Safety System Needs Reform

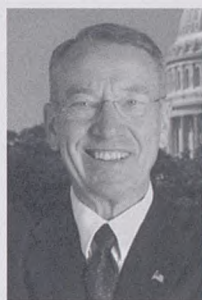
Americans' confidence both in the safety of our medicines and in the ability of our government to ensure their safety has been seriously undermined by recent revelations of health risks associated with a number of frequently prescribed drugs, Sen. Grassley said in his keynote address on "Medications, Safety and the FDA."

"Taking prescriptions drugs used to be very easy," he said. "Americans took a pill and figured, if they thought about it at all, that it was safe, because the government had said it was safe."

"Our confidence has been shaken. Now we have a list of complicated issues we have to consider," he said.

For example, they may ask themselves whether the drug company did enough testing, whether the Food and Drug Administration required enough trials, whether they listened to any "naysayers" who said the drug wasn't safe, whether the FDA is too close to drug companies to ensure proper oversight, and, if there were findings that raised questions about the drug's safety, whether their doctor know about those findings, he said.

"The job for Congress, FDA, and consumer advocates is to get to the bottom of drug safety procedures ... to figure out once and for all what it will take to make sure our drugs are



Sen. Charles Grassley

safe," Sen. Grassley said.

To start with, the FDA must change its culture, he said. "The FDA has gotten too complacent. The leadership of the Food and Drug Administration ought to make it clear that they respect the scientific process and that they are only responsible to the public."

In addition, Congress needs to make some legislative changes, he said.

To that end, he has introduced legislation with Sen. Christopher Dodd (D-CT) that would create a publicly accessible national data bank of clinical trial information, including the results of those trials. In addition, the FDA's safety review process needs to be made more transparent, he said.

Sen. Grassley said he and Sen. Dodd are also working on legislation to create an office of drug safety within the FDA. "The existing office is hampered by real and perceived conflicts of interest," he said.

Among the goals would be to develop better review of drugs once they are on the market. The office would also have regulatory authority to require label changes and to suspend advertising or sales in response to safety concerns.

"The Food and Drug Administration absolutely has to do a top notch job of ensuring drug safety" because "consumers shouldn't have to second-guess the safety of what's in their medicine cabinets," he said.

New Energy Policy Needed

The country needs a whole new energy policy to "shake us free of our dependence on foreign oil and, for the first time in a long time, give consumers in this country a fair shake," Sen. Wyden said in his keynote address on "Protecting Consumers and U.S.

Energy Security in Today's Volatile Market."

Sen. Wyden criticized the administration for its lack of an effective energy policy.



Sen. Ron Wyden

"This administration has oil and gas in their gene pool," he said. Instead of using that expertise to advocate on behalf of American consumers, "they just went off to the sidelines," he added. "Not only is it wrong, it is exactly contrary to what they said they would do."

He cited, as one example, the failure of the administration, with oil prices at near record levels, to pressure OPEC to bring those prices down. He also criticized the Federal Trade Commission for its failure to prevent anti-competitive mergers or to take action against anti-competitive practices that drive up gasoline prices to consumers.

Sen. Wyden said his top priority, however, is to "unravel" the more than \$1 billion in annual tax subsidies that go to oil and gas companies when "we are exporting more than one million barrels of U.S. produced oil every day."

"I hope that the consumer movement will declare war on spending scarce resources on subsidy boondoggles," he said.

Energy is not just a consumer issue, it is a national security issue and an economic security issue, he said. "We are essentially subsidizing all the wrong people to do all the wrong stuff. The most patriotic thing you can do in the United States is get a brand new energy policy," he said.

Computer Problems Demand Solutions

As computers have become more essential to our society, they have also created problems for consumers that demand solutions, a panel of experts said in a Consumer Assembly session on "Internet Insecurity."

Connecting a computer to the Internet exposes consumers and small businesses to a criminal class they never would have come in contact with before, said *Wall Street Journal* technology columnist Walter Mossberg.

"The whole world really that uses computers ... finds itself exposed to the work of an international criminal class that wakes up every day and thinks about nothing else but how to harm, invade, and steal things from your computer," he said.

"This situation has a wider impact than just the direct effects on people" related to preventing and responding to problems, he said. "The security crisis ... actually, I think, causes people to be afraid of their computers, not to trust their computers, and therefore not to use their computers in the way the industry's basic proposition envisions."

Mossberg decried the failure of Congress to pass effective legislation. "But we don't have to wait, I don't think, for these laws, as

important as they are," he said. "We need a much better response from the extremely wealthy computer industry, starting with Microsoft, than we've gotten so far."

Having to manage separate programs to deal with spam, viruses, phishing, and spyware poses too much of a burden, he said. "We need one solution that keeps you secure from whatever new kind of threat somebody comes up with," he added. "It needs to be totally simple ... and it ought to be reasonably priced."

Jeffrey Fox, Senior Project Editor for *Consumer Reports*, was similarly critical of both the industry and congressional response.

Having passed spam legislation that continues to permit some of "the most egregious practices," preempts stronger state laws, and doesn't allow consumers to sue, it "appears to be taking a similar approach to spyware," he said.

Meanwhile, industry turf wars and intellectual property disputes have undermined efforts to set technical standards for email and spyware, he said.

"We should demand of our government that they ... give regulators and law enforcement the resources they need. We should

demand that Internet providers prove their concern for consumers by cooperating with major industry standard-setting bodies," Fox said.

Microsoft Corporation's Senior Security Strategist Philip Reitingger acknowledged the problems but said the opportunity exists to make real progress in making the Internet more secure.

"There is a very angelic alignment right now between what customers are demanding ... and what our national security needs are. Now security is on everybody's mind," he said. "It is a major market driver."

"In this realm, industry, government, and end users all have roles," he said.

Industry has to innovate and share what they know cooperatively, he said. End users are going to need to continue to take reasonable steps to protect themselves, he added, while acknowledging that this burden needs to be lessened. And the government has to have "the right policy environment," he said.

The goal should be to "be able to detect the bad guys and put them in jail," he said. Right now, "that's too hard to do."

Attack on Peer-to-Peer Networks Threatens Consumers

Efforts of recording companies and movie studios to squelch peer-to-peer communications networks threaten economic, technological, and social innovation, according to a CFA report released in March.

The report, "Time for the Recording Industry to Face the Music: The Political, Social and Economic Benefits of Peer-to-Peer Communications Networks," analyzes the critical role that peer-to-peer networks play in promoting technological innovation, new modes of economic growth, and fundamental social, political and economic progress.

"If vested interests in the recording and movie industries have their way, innovation and progress will be the victim of a public relations campaign intended to paint file sharing as 'piracy,'" said CFA Research Director and report author Mark Cooper.

"Contrary to the copyright holder claims that peer-to-peer communications networks are copyright infringement schemes, decentralized peer-to-peer networks have become the dominant form of Internet communications because they are vastly more efficient," he said.

"Peer-to-peer technologies eliminate the congestion and cost of central servers and distribute bandwidth requirements throughout the network," he explained. "In so doing, they become a powerful force to expand freedom of expression and the flow of information, stimulate innovation, and promote the economic interests of consumer and creative artists alike."

The attack on these networks is coming

just as their potential to deliver economic growth and technological progress is beginning to be exploited, he said.

Attacks Designed to Choke Off Competition

The report presents economic data that suggests the real motive of the recording and movie industries is to choke off competition.

"These old economy industries feel threatened by individual citizens communicating directly with each other, sharing information that enables them to produce products they desire at the precise quantities they need and at ever-lower prices," Cooper said.

To counteract this threat to its monopoly power, the entertainment industry's strategy – pursued in the courts and in Congress – is to punish technologies that facilitate file sharing, impose technology mandates that inhibit file sharing, and mandate a "hub and choke" architecture of central servers and lists that the Internet has left behind, Cooper explained.

"By creating a surveillance society that requires technologies to fingerprint every file, tag every user, and monitor every transaction, the recording company and movie studio proposal would destroy the fundamental nature of peer-to-peer networks," he said.

One front in the entertainment companies' campaign involves legal challenges to the peer-to-peer networks.

In March, the U.S. Supreme Court heard oral arguments in a case – Metro-Goldwyn-Mayer Studios, Inc. vs. Grokster, Ltd. – to determine whether a technology company

can be held liable if its product can be used to violate copyright restrictions.

"Copyright is designed to stimulate the free flow of ideas, not to guarantee forever the profits of copyright owners," Cooper noted. "The public interests will be greatly advanced if the Supreme Court rejects the demands of the recording companies and movie studios to extend their copyright to regulate technology."

He also called on the court to "put an end to the reign of litigation terror" that the copyright holders have launched by "making it clear that technology is not the villain and sending a signal to the lower courts to dismiss out of hand the frivolous litigation brought by the recording companies and movie studios."

The recording companies and movie studios are simultaneously pursuing a legislative strategy. They succeeded in getting bipartisan legislation introduced in the Senate last year to hold technology companies responsible for creating devices that could be used to pirate digital content.

If they lose their case before the Supreme Court, they are likely to push ahead even more aggressively on the legislative front, Cooper predicted.

"Copyright holders rarely accept court decisions when the underlying laws can be

amended to do their bidding," he warned. "There will be protracted legislative fights before this digital piracy panic subsides."

Instead of bowing to special interest pressure to squelch these networks, public policy should embrace peer-to-peer technologies, he said.

Public Education Campaign Announced

To encourage that end, CFA, Consumers Union, U.S. Public Interest Research Group, and Free Press announced that they would be launching a major grassroots public education campaign to raise consumer awareness of the value of peer-to-peer networks and fend off assault on these applications by major record companies and movie studios.

The grassroots initiative will include educating policymakers, consumers, businesses and ordinary citizens on the growing range of political, social, and economic uses of peer-to-peer networks.

"In order to protect their rights as citizens and consumers, the public must become aroused and engaged to balance the immense monetary and political power of the recording companies and movie studios," Cooper said.

On the Web

www.consumerfed.org/PEERtoPEERSTATEMENT.pdf
www.consumerfed.org/P2P-Press-Release22March2005.pdf
www.consumerfed.org/PEERtoPEERISSUEBRIEF.pdf
www.consumerfed.org/BENEFITsofPEERtoPEER.pdf

SEC Promises Further Study Of Broker-Adviser Regulation

The Securities and Exchange Commission voted as expected in April to allow brokers to offer fee-based accounts without automatically being regulated under the Investment Advisers Act. At the same time, however, the Commission acknowledged that lines between brokers and investment advisers have grown increasingly blurred, that investors do not understand the differences, and that more must be done to bring regulation of securities industry professionals into line with current marketplace realities.

The Commission took two concrete steps toward that goal at the April meeting. It ruled that both discretionary accounts and financial planning will henceforth be regulated under the advisers act. As a result, brokers who provide these services will have to put their customers' interests ahead of their own and provide up-front disclosure of any conflicts of interest.

"This is an important first step toward creating a meaningful functional distinction between brokers and investment advisers, but it is just a first step," said CFA Director of Investor Protection Barbara Roper. "Fortunately, the commissioners appear to recognize that fact."

In order to determine the best approach going forward, the Commission directed the staff to come up with a plan for a study of possible alternative approaches. That study is to examine whether legislation is needed to consolidate the regulation of financial professionals or whether changes in rules of the Commission and self-regulatory organizations can accomplish the same goal.

Roper said there are a number of steps the SEC could take short of legislation that would bring about real progress. Among the approaches the Commission should examine as part of its study, she said, are: requiring brokers who offer personalized investment advice under their exception from the advisers act to act as fiduciaries in their customers' best interests; more aggressively enforcing the fiduciary duty to provide more meaningful investor protections; and requiring all financial professionals to provide pre-engagement disclosure covering, among other things, conflicts of interest and disciplinary history.

"Investors expect advisers to act in their best interests," Roper said. "If the Commission is going to allow brokers to portray themselves as advisers and offer extensive personalized investment advice, then it must take steps to ensure that they are subject to this fiduciary obligation and the disclosure obligations that go with it. Anything less would leave investors with inadequate protections."

PRSR STD
U.S. POSTAGE
PAID
WASHINGTON, D.C.
PERMIT NO. 8772

CFAnews
CONSUMER FEDERATION OF AMERICA
 1424 16th Street, N.W. • Washington, D.C. 20036
 (202) 387-6121 • www.consumerfed.org

