

SINKING THE COPYRIGHT PIRATES: GLOBAL PROTECTION OF INTELLECTUAL PROPERTY

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MONDAY, APRIL 6, 2009

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10 o'clock a.m., in the Van Nuys Civic Center, 14410 Sylvan Street, Van Nuys, California, Hon. Howard L. Berman (chairman of the committee) presiding.

Chairman BERMAN. The hearing of the Foreign Affairs Committee will come to order. Thank you all for coming, and I do want to notice the presence of Congressman Adam Schiff, who is not now a member of the committee, but has been for a number of years, and is a active member of the Judiciary Committee, with great interest in some of the issues we will be discussing, and a fellow Californian. We appreciate his interest in this issue, and without objection, he may participate in the hearing and be able to ask questions of the witness.

I would like to start off by thanking everyone who traveled here today to help sink the copyright pirates who plunder our country's creative wealth. The theft of intellectual property, or IP, has plagued America's entertainment industry for many years. Just this week, a month before its release, the film "Wolverine" was downloaded over the Internet hundreds of thousands of times. IP piracy has now become an issue for a broad cross-section of the U.S. economy—for companies big and small in places far from Hollywood, Nashville and Broadway.

While the House Foreign Affairs Committee has always delved into matters of global economics and trade, this hearing marks the start of a concerted effort to capitalize on opportunities that are unique to this committee. Through our oversight of international programs, travel, and long-standing relationships with policy-makers from other countries around the world, we plan to work more closely with other governments to provide the resources, training, legal guidance and tools which they need to alleviate the international piracy that is so devastating to American ingenuity and American jobs.

According to the International Intellectual Property Alliance, copyright infringement in 43 countries caused an estimated \$18.3 billion in trade losses in 2007. The Motion Picture Association of America noted that the film industry lost \$6.1 billion in 2005 due to motion picture piracy. The music industry estimates over 40 billion illegal downloads in 2008.

The U.S. Chamber of Commerce found that trade in counterfeited goods is responsible for the loss of 750,000 American jobs per year. We just spent billions of dollars on a stimulus package to provide jobs to millions of unemployed Americans, and if we merely focused on curtailing piracy and counterfeiting, we would preserve almost 1 million jobs.

IP protection is an economic stimulus. To help boost our economy, it is imperative we take measures to ensure American innovations are protected abroad and artistic communities can earn a return on their investment in new creative expression.

This hearing is particularly timely as the Office of the United States Trade Representative will soon release the “Special 301” report. This report lists specific countries whose lack of IP protection has the greatest adverse effects on the United States’ intellectual property industries—among them, Russia, China and India.

The types of piracy occurring abroad range from selling DVDs on street corners to mass productions of optical discs and unauthorized reproductions distributed via the Internet.

By way of example, even though Russian law enforcement officials have increased the number of raids against warehouses storing pirated material, the number of criminal enforcement actions in the physical as well as online environment falls far short of what is necessary to address the problem.

While Russia did shut down the Web site, allofmp3.com, which sold business without rights holders authorization, it became a game of Whac-A-Mole, as almost immediately several others took its place. In addition, Russia has yet to certify a legitimate collecting rights society, which, if it finally happens, will finally allow performers to collect for use of their music. Russia needs to live up to the intellectual property rights agreement it made with the United States in November 2006, especially if it would like to be considered ready to join the World Trade Organization.

While Russia has failed to enforce intellectual property rights sufficiently, China has chosen to enforce them selectively. During the summer Olympics in China, there were few, if any, counterfeit Olympic T-shirts to be found in the street stalls. NBC found that only 1 percent of online viewing by Americans occurred on copyright-infringing sites. This proved that it is possible for Beijing to combat piracy when it wants to—when the eyes of the world are on China. Estimates from the United States copyright industries show that 85–90 percent of their members’ copyrighted work sold in China in 2007 were pirated. Internet piracy is rampant in China and increasing as more Chinese are going online. In fact, the leading Chinese search engine for audio files, Baidu, offers links for downloading or streaming unauthorized copyright material.

According to a recent article in *Forbes*, the number of copyright infringing videos on Chinese user-generated sites jumped more than six fold between September 2007 and September 2008. China must demonstrate the will and the way to deal with piracy.

As the desire for American content reaches new audiences overseas, pirates are becoming more sophisticated and daring. In particular, we are disturbed by the rise of signal piracy in the Philippines, and alarmed by pirates in Thailand who have established their own movie channels. These modern day Thai pirates of the

air are beaming unauthorized programming to millions around the region. Clearly, these types of piracy don't need to be occurring in big countries to have a devastating impact on the American economy. The Bahamas currently maintains a provision in its copyright law that allows local cable operators to downlink, retransmit and profit from United States-copyrighted works without authorization from the copyright holder. This practice sets a dangerous precedent for the protection of United States audiovisual works throughout the Caribbean and Latin America.

Even countries not on the priority watch list engage in unprecedented levels of piracy. Spain remains a hub of Internet piracy. Mexico has more than 80 well-organized black markets selling pirated goods. Moreover, Mexico has the most prolific camcorder piracy problem in Latin America as Mexican law doesn't protect against the recording of motion pictures in theaters. Speaking of lack of laws, we still need Canada to take a meaningful step to updating its copyright laws to come into compliance with the World Intellectual Property Organization Internet treaties.

Intellectual property piracy is truly a global problem that harms not only U.S. industry but has economic implications for other countries developing and supporting their own entertainment industries. India ought to appreciate the need to address IP protection. Its own homegrown entertainment industry, "Bollywood," is subject to many of the same concerns that plague Hollywood. We need to do better at protecting Bollywood films when pirated copies are sold in mom and pop shops here in the U.S. And, as is evident with the crossover success and number of pirated copies of "Slumdog Millionaire" viewed in India, India needs to enforce adequate protections for international innovation as well.

The United States and its trading partners rely heavily on investments in intellectual property to drive our economies. Unfortunately, the incentives and profits for engaging in piracy are high, and the risks of being apprehended and sanctioned are low in many of the countries around the world. Furthermore, The Center for Global Risk and Security at the RAND Corporation released a report in March documenting a link between piracy, organized crime and funding of terrorist activities. Piracy of copyrighted materials is not a victimless crime and its global repercussions must be addressed. I plan to introduce legislation shortly that will begin to elevate the attention given to intellectual property concerns abroad.

We hope to hear from our distinguished panel of witnesses today about the real impact of piracy on their businesses and what mechanisms we can implement to protect American intellectual property internationally.

And it is now my pleasure to recognize someone who came a very long way for this hearing, and we are very grateful. She gets the prize, for many things, but she is the ranking member of the House Foreign Affairs Committee. She is a good friend and we are really excited. She came to Van Nuys, California, for this hearing. Our ranking member, Ileana Ros-Lehtinen, for any opening remarks that she might have.

Ms. ROS-LEHTINEN. Thank you so much, Howard. It is indeed, a pleasure and an honor to be here in your area, and to have our

California colleagues as well. Our districts have a symbiotic relationship, because your constituents make their livelihoods here, so it is in my interest to make sure that they continue to have a strong economy, because then they take their money to my district in South Beach and spend it. So we want them to continue to make money so they can come to Florida and stimulate our economy.

Now my husband is a lawyer, who always lectures me at the end of the week about what Congress is doing meddling in all these issues for which we have no jurisdiction. But in this case—and he made sure that I had this with me—the Constitution of the United States, our Founding Fathers, Article I, Section A, states that “Congress shall have the power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

So copyrights and patents have been important from our Founding Fathers to the front pages of today’s papers. When we look at the piracy that was going on, and continues to go on in “Wolverine” and other movies and music, we see that it has continued from way back when to today.

I am so glad that you have made sure that our committee has had a long-standing interest in this worldwide problem, and its broad impact on our U.S. interests, including our national security. A prominent example of the committee’s work was the hearing in 2003, at which senior officials from Homeland Security and INTERPOL testified that violent militants, including al-Qaeda, Hamas, and Hezbollah, were in fact enriching themselves from intellectual property piracy and their proceeds in order to fund their activities around the world.

According to the Secretary-General of INTERPOL:

“Intellectual property crime is becoming the preferred method of funding for a number of terrorist groups. There are enough examples now with the funding of terrorist groups in this way for us to worry about the threat to public safety.”

As you pointed out, many people believe that the piracy of intellectual property, including their own illegal copying of music, movies, and software, or their purchasing of bootleg copies, is close to being a victimless crime with only a minor cost to large and wealthy corporations.

But there are in fact real victims in these so-called victimless crimes. I am so glad that you have been so involved in international copyright infringement for many years. As our economy has moved from one of traditional manufacturing to one that is knowledge-based, the protection of intellectual property rights has become increasingly important to our country’s prosperity.

It is definitely a cause for concern to the increasing number of Americans whose livelihoods depend on these industries.

In 1996, the International Intellectual Property Alliance, which you quoted, estimated that United States businesses lost more than \$6 billion to copyright pirates in other countries, with China accounting for one-third of the total.

The problem was enormous then, but it has grown rapidly since. U.S. companies lost last year, as you pointed out, more than \$20

billion due to copyright infringement around the world. It's an annual theft of tens of billions of dollars as manifested in the loss of countless jobs, and a major reduction in tax revenues. The problem is a global one, and there are few countries where it does not occur, sadly, including our own.

But the great bulk of the problem occurs in relatively few countries. The principal blame falls upon the criminals and those who do the dirty work, but their ability to operate requires the tolerance of national and local governments. Protection from law enforcement officials is often secured through corruption funded by large profits from these criminal activities.

But widespread corruption is not the only obstacle. The biggest problem is that many of these foreign governments view this issue as being of little concern to them and see the cost as being largely borne by others. Thus, they have little incentive to do more than the minimum needed to keep the U.S. and other countries reasonably satisfied that they are in fact doing something.

This lax attitude makes much of our effort to deal with this problem ineffective. When they are confronted with evidence that their citizens are engaged in illegal activities, and are reminded that their international agreements require them to take action to stop it, foreign governments are prone to make empty pledges that they will do more in the future. They believe that then we will go away.

So new measures are often agreed to, promises are made, and yet somehow the problem is never fully resolved. So any policy that relies on securing new agreements or fresh promises is unlikely to solve the problem. That is the case in China, the worst violator of intellectual property rights.

The U.S. Government has repeatedly asked Chinese authorities to take action and we have been repeatedly told that they are doing the best they can. But too little is being done and that is by choice.

China's largest Internet search company automatically asks anyone who logs on to their site if they want to link to a wide array of known music piracy sites. It is actually pushing piracy. It is a legitimate company operating openly in China, Baidu. The Chinese authorities are well aware of this problem, they could shut it down with a phone call, but they have knowingly decided to do nothing to address our complaints because they have decided to pursue a policy in which Baidu and other Chinese companies will become global players in this industry.

The Chinese authorities have invested enormous resources into censoring anything on the Web that dares to mention democracy, that dares to mention the Falun Gong, or any other subject that the regime wants to suppress. Many people have actually gone to jail for simply expressing their views, yet Chinese officials make the absurd claim that there is nothing more that they can do regarding online intellectual property piracy. That is outright theft made possibly by government policy, and China is not the only country where this occurs. The root of the problem is worldwide. For many governments, the costs of doing nothing are small while the financial benefits to their own companies can be quite large.

The only way to change that attitude is to change the incentives, namely by increasing the cost of failing to take action. The effectiveness of this approach will depend directly upon the pressure

that is applied. That cannot happen without the active role of the U.S. Government. Asking our trading partners to uphold their commitments is certainly a part of that process, but the olive branch alone has not worked and will not work. It must be supplemented with firmer measures. Yes, we must actively use the existing process in the various international agreements that concern intellectual property rights, and yes, we must work with our allies to coordinate our efforts as many of these are increasingly impacted by this problem too.

We literally cannot afford to look the other way and tolerate inaction when our interests are being undermined by governments which profess friendship and profess cooperation even as their citizens rob ours of their wealth and livelihoods, and our country of its prosperity.

Thank you so much, Mr. Chairman, as always, for holding this hearing, and thank you for the kind invitation, Mr. Berman.

Chairman BERMAN. We're glad to have you here, Ileana, and now I am going to recognize the other members who are with us for short—as opposed to my—comments. Then of course we will all leave. Oh, no. [Laughter.]

I am pleased to recognize my neighbor and colleague from Los Angeles, Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman. If this subject affected only the entertainment industry, there would be well enough reason to have these hearings here today, because the core copyright industries, by themselves, are 7 percent of American gross domestic product, and are responsible for well in excess of \$100 billion of exports each year.

But this problem is even larger than the entertainment industry. It affects counterfeit drugs, counterfeit aircraft and auto parts, handbags. In total, counterfeiting costs U.S. business over \$250 billion annually. That is increasing.

Illegitimate goods have increased from \$5.5 billion in 1982 to more than \$600 billion annually, and now comprise 6–9 percent of world trade. Counterfeit auto parts alone cost auto companies \$12 billion annually, \$3 billion to the U.S. companies. Some 750,000 American jobs have been lost due to counterfeit merchandise. There's a threat to consumers as 10 percent of all pharmaceuticals worldwide are fake drugs. And 2 percent of the airline parts installed each year are counterfeit.

The benefit to organized crime has been noted by the ranking member. There is also a benefit to terrorism. The 1993 World Trade Center bombing was partially financed through the sale of counterfeit goods. One-point-two million dollars in counterfeit brake pads and shock absorbers were seized in Lebanon. The profits were earmarked for Hezbollah. An al-Qaeda training manual recommends the sale of counterfeit goods as a source of revenue for that organization.

We face a worldwide recession, and I think at the core of our world economic problem is the lopsided trade deficit that the United States has with the world, and a big part of that is the fact that so many countries have, as a matter of policy, decided to allow American copyrights, patents and trademarks to be infringed upon.

Some countries approach this with good faith, and we need to streamline, we need to provide aid to their enforcement efforts. But let's face it: Some countries do not have good faith. They are playing us and we will have to decide, as a country, whether we are serious about intellectual property or whether we are just going to go through this kabuki dance again, where we send a protest note and one or two counterfeiters are inconvenienced for a while.

Ultimately, we'll have to decide whether those who are playing us on the intellectual property issue will have access to U.S. markets, and that will get very controversial. I yield back.

Chairman BERMAN. I thank the gentleman and now the casual, sort of Hollywood, California, gentleman, who took off his sunglasses, unfortunately. Mr. Rohrabacher is recognized.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman, and thank you for holding this hearing on an issue that should be of the utmost importance to the American people.

The theft of America's intellectual property represents a tremendous loss of wealth, that undermines the standard of living of our people and undermines the prosperity of our country. America's creative genius has always been our greatest asset. In the last few decades, however, as we have heard, our country has shied away from confronting this issue of intellectual property theft with both friends and countries that are adversarial as well.

We can no longer turn a blind eye to this situation. In today's economy, it is our duty to the creative Americans, with patents and copyrights, to see that their ownership rights are not being violated, and that the value of their creativity is not looted, and that foreign governments that are aiding and abetting this blatant theft are called to task.

Mr. Chairman, whether it is an attempt to severely limit damages suffered by our inventors, when the rights of their patents are violated, or whether it is the copyright violations which are manifested in the piracy of music and films, American law should be on the side of our creative citizens. American inventors, songwriters, musicians, scriptwriters and film producers are valuable national assets that we should defend from foreign, and yes, domestic looters.

The body of our Constitution, as Ileana has pointed out, uses, mentions the word right, and I might add, it only uses in the body of the Constitution, that word once, and that is in reference to the right of inventors and authors to control and profit from their genius.

But now we are allowing these rights granted by our Constitution to be violated by foreign thieves. I look forward today to hearing about the details of the magnitude of the challenge that we face, in order to put an end to this global and domestic thievery. It is time to bring the hammer down on those who engage in this crime, and I would ask at this time to include in the record remarks on intellectual property theft by my good friend, "Skunk" Baxter, Jeffrey "Skunk" Baxter, who was lead guitar player with Steely Dan, and of course the Doobie Brothers, and I would ask that his remarks be made part of the record.

Chairman BERMAN. After we read them. No. Of course. And without objection, they will be included in the record.

[The information referred to follows:]

Testimony of Jeffrey “Skunk” Baxter
Grammy winning musician and national security consultant for US Dept. of Defense, the
US Intelligence Community and private industry.

REMARKS RE THE THEFT OF INTELLECTUAL PROPERTY.

The practice of stealing intellectual property has been a fact ever since mankind began to generate creative ideas. The motives may vary, such as the desire to get “something for nothing”, to provide intellectual horsepower to groups or individuals who have a deficit of creativity and ideas, or as a short cut to gaining an advantage, whether in business or other area. Until recently in the history of mankind, stealing intellectual property meant literally “stealing” something, whether it be a work of art such as a painting or sculpture, a written document like a letter, and ideas, plans for an invention or even a musical manuscript, (such as the case with Saliere and Mozart.) But as defined by the root meaning of the word “manuscript” reproducing documents was something that had to be done by hand in a highly labor-intensive, expensive, one piece at a time manner. It wasn’t until the introduction of Gutenberg’s printing apparatus that the capability to reproduce and disseminate documents in an efficient, moderately inexpensive and in a fairly widely available format (ex the Bible) came into being. As the art of reproducing this intellectual property grew in sophistication, so did the capability to disseminate it. At first, the only way a written or printed page of text would be useful to someone was if they had the ability to read. A wood block print was a bit easier for most folks to interpret and this was the first step to the concept of photography. I one wanted to see a play or hear a musical performance, it was necessary to either pay musicians and actors to perform, or physically go to a location specifically designed for

that purpose. Since then the capability to disseminate entertainment and learning has grown exponentially, from photography to the ability to record audio and video information to magnetic tape, CD and DVD formats and even to a computer.

I would like to first address the issue of IP theft in the area of entertainment. In the past, besides actually stealing a record from a record store, the only way to copy a recording was by making a copy onto magnetic tape, a process that was somewhat expensive, in that audio tape recorders were not cheap or widely available. The same held true for video. We have entered an era where massive amounts of music and other entertainment programming can be stored very cheaply, reproduced in vast quantities on inexpensive media and distributed via the Internet for free. At the same time, a culture has grown, starting in the Gen X demographic, and continuing to the present that, if something is just electrons and not a tangible object, that stealing it is not really stealing. That concept, combined with an attitude that “the big corporations are way too rich anyway”, (a hold over from the days of “phone phreaking”), has created an entire culture that does not see the theft and distribution of intellectual property as a crime, and doesn’t seem to realize how that affects the ability of artists, actors, and other creative persons and the businesses that are a part of to earn a living from their work. Creative people and the businesses they are a part of invest time and money into their creative endeavors and if there is no return on this investment, eventually this will do serious harm to *****. The negative effects of this problem are not just limited to the artist and his or her ability to make a living from their art. In an article in Foreign Affairs Quarterly a few years ago, Joseph Nye, former ******, made the point in his article

and the subsequent book entitled “Soft Power”, that a very large part of the US’s ability to influence the world came not just from it’s economic and military power, but it’s “soft power”, the strength and influence of it’s culture. For example, one could easily make the case that among the factors that caused the Soviet Union to collapse were, Ronald Reagan’s vision of missile defense, forcing the USSR to spend themselves into a hole and what can be described as “blue jeans, Elvis Presley and french fries”, a phrase that is sometimes used to illustrate the power and influence of US culture. To damage this is to seriously undermine much of what the world appreciates and respects about the US.

I would like to take off my musician hat and put on my IC hat for a moment. There is a much darker side to all this. Stealing is a crime and, as I have described in the first part of this presentation, the growth and sophistication of technology as it relates to the Internet has made this type of crime much easier. It is now apparent that US industry is losing billions of dollars as a result of computer cyber crime, unauthorized access into corporate databases that contain proprietary information, intellectual property and other vital data. What used to take an army of people, complicated planning, sophisticated espionage and a great deal of time and money can now be had with virtually a simple mouse click. This problem does not only undermine the business and commercial world but has grave consequences for the national security of the United States. Everyday the doors to our most precious secrets are hammered by cyber battering rams. The DoD reports thousands of attempts each week to access classified information and communications systems. These are, in essence, attempts to steal the intellectual property of the US Government.

The point I am trying to illustrate is that in a very short period of time the

capabilities of the Internet, the computer, the eternal quest by those who would steal and do harm and the incredible ease by which virtually anyone can perpetrate the theft of intellectual property, have all created a perfect storm that threatens to undermine the creative process that fuels the engine of invention, discovery and development.

It is imperative that we, as a country, as well as other like-minded individuals and groups, as well as sovereign nations do everything possible to deal with this problem now. It is already epidemic and is in danger of becoming endemic and so entrenched that it will soon be impossible to fix. I would urge this committee, in the strongest terms, to address and deal with this problem immediately and to support policies that will provide maximum protection for the intellectual property of American citizens and our country.

Mr. ROHRABACHER. And finally, one point that I would like to make, and that is Ileana outlined very well the just arrogant theft that's taking place in China. China is widely recognized as an adversarial country to the United States, competitor and an adversary, perhaps even a potential enemy. Certainly a nondemocratic, authoritarian country that has seen no liberalization of their political system.

You might expect this type of theft, this type of behavior from the Chinese, and we should try to push them in the right direction and put pressure on them.

But we have trouble with our friends as well. Let us note that many of the pirated items that we are talking about, that end up, even sent back to the United States, adding insult to injury, they are pirating, selling them overseas, then they bring them here. One of the worst violators of permitting their country to become a transshipment depot happens to be Canada, our best friend.

So we have one of our, you know, worst adversaries on one side, engaging in this crime, but who is aiding and abetting the crime but our best friend, Canada. And Canada refuses, for example, to permit their customs people to seize, or to at least stop goods that are being transshipped through Canada into the United States. They won't even permit them to stop these counterfeit items that are blatantly counterfeit items.

So we need to hold Canada, our friend as well as our adversaries, we need to hold them responsible for this, and we need to make sure people know, around the world, we are getting serious with this issue because it has a dramatic impact on the economic well-being of our people at a time when we cannot take that for granted.

Thank you very much, Mr. Chairman.

Chairman BERMAN. Thank you, and the gentleman from California, Mr. Royce, a member of the committee.

Mr. ROYCE. Thank you, Mr. Chairman. I don't think many people realize just the impact this has on our economy. The estimate is about \$5 trillion a year in terms of the portion of our economy, the GDP that comes about as a result of intellectual property, everything from motion picture to pharmaceuticals. And that's larger than the GDP of any other country on the planet. So when it comes to undermining intellectual property in the U.S., it has a very pronounced effect.

But more importantly I think to us right now, is because of the margins in this particular crime, the ability for this to fund terrorism becomes very acute. Hezbollah utilizes this type of activity. As a matter of fact, Assad Ahmad Barakat, who runs the tri-border area in Argentina, Paraguay, Brazil, he has been caught sending checks to Hezbollah. Hezbollah, as a matter of fact, the leadership of Hezbollah, have thanked him for his ongoing efforts.

Now today, he is in jail for tax evasion in Paraguay. But that hasn't stopped him, or his associates, from continuing in this endeavor to support the Hezbollah terrorist organization. And as we know, maybe it cost \$1.5 million to run that operation on 9/11, it is very, very vital for these terrorist groups to have access to these types of resources.

So unless we shut this down, everything from human trafficking rings to terrorist operations around the planet, are funded by this kind of activity.

Another reason why India—you know, the chairman, Chairman Berman spoke about the need to get India on board. If you think about it, the godfather of godfathers, as he is called, of Indian organized crime, Dawoud Ibrahim, is linked to piracy in a big way, and frankly, also, he is a big supporter of al-Qaeda, and in the past also of the LeT. He was largely responsible—that that organization was responsible, back in 1993, for the Mumbai bombings. That series of bombings killed 257 people.

Now D Company is the operation he runs. It is now integrated into every part of the Indian film making industry, from distribution to loan sharking, and I guess a special irony here, for those of you who saw "Slumdog Millionaire," is the fact that a lot was made of organized crime there, and the way in which corruption has that insidious effect.

Think for a minute, the very people portrayed, the very organized crime syndicates, are involved today in pirating and undermining Bollywood, and on undermining Hollywood. One more example. And if they weren't tied to terrorist networks that were engaged in this kind of activity, we would have enough to worry about.

But this should really focus our attention, I'm afraid. The high profit margins in this type of crime make for little wonder why gangsters and terrorists have turned to piracy. But turning back to the overarching theme of the Founding, the architects of this republic. You know, they said patents and copyrights are the legal implementation of the base of all property rights, and that, to them, was a person's right to the product of that individual's mind.

That is why the architects of this republic cared a lot about this concept and put it in the Constitution, that is why we should care, and thank you again, Mr. Chairman, for this hearing.

Chairman BERMAN. Thank you, and the fifth gentleman from California, Mr. Schiff, is recognized.

Mr. SCHIFF. Thank you, Mr. Chairman. It is my privilege to represent the cities of Burbank, Glendale and Pasadena, and several surrounding communities, home to many hard-working Americans who are employed in the entertainment industry, both at movie studios, the recording industry post-production shops, among other IP enterprises, and I have seen firsthand, the toll that intellectual property theft takes on the lives of real Americans.

The work product of my constituents is being stolen every day. I have often said that on an individual level, piracy is nothing less than high-tech shoplifting, and in the aggregate, it can destroy whole industries.

There is no difference between stealing a DVD from a store and selling a pirated DVD on the street, or uploading it to the Internet, and when people buy pirated DVDs on the street, or download music on the Internet without paying for it, they aren't just stealing products, they're stealing jobs from American workers, which with unemployment rates in excess of 10 percent here, in California, and approaching that point in other parts of the country, we ought to be more concerned with than ever.

A critical component of our Nation's competitive strength is the creation of copyright-based goods and services. This is a reality even clearer now as the American automobile industry, once the prime example of 20th Century American ingenuity and prowess in manufacturing exports, stands on the brink of collapse.

The American assembly line of the 21st Century is now made up of the creation, production and export of things like music, motion pictures, software products, books, accounting for 6 percent of our Nation's GDP.

Indeed, the U.S. copyrighted industry is one of the few bright spots in our economy, and will serve as a key cornerstone in the effort to rebuild our economy.

When one of our trading partners allows copyright infringement to occur with impunity, they are gaming the system and injuring our economy. We have to take much stronger steps to ensure other countries on our list of infringers are forced to take piracy more seriously.

In Congress, we have been working to accomplish this. As a co-founder and co-chair of the Congress International Anti-Piracy Caucus, a caucus made up of over 70 Members of both the House and Senate, we are committed to reducing the scourge of piracy abroad.

Each year, we unveil a country watch list, signaling out high priority countries such as Russia and China, due to the scope and depth of their piracy problems, which cost United States copyright industries, and millions of Americans who work in these companies, billions of dollars every year. Next month, we will be unveiling our 2009 watch list.

I want, though, to highlight also the role that some of the American companies and American industries play in tacitly support piracy in other parts of the world.

For example, unfortunately, many of the major United States credit card companies were previously facilitating transactions on a notorious Russian Web site that has been identified by our U.S. Trade Representative and the Department of Commerce as the world's highest volume online seller of pirated music.

But these problems go on. There are a number of fringe, online sites that brazenly promote the infringement of U.S. copyrights, that also benefit from hosting ads and obtaining ad revenues from legitimate U.S. companies, often at times unbeknownst to these companies.

I have, for example, here, a screen capture of a Web site, and I am not going to give the name of it, it is in the Ukraine, cause I don't want to promote their illegal business, but if you can see a little more closely on this, they are illegal offering songs and albums from Kelly Clarkson and U2 for sale, and on the front page you can see logos for Visa and MasterCard.

Not only is it problematic to facilitate these transactions, but their inclusion on the page can add a false perception of legitimacy to the Web site. I think we need to look at how extensive this problem is, and how other companies and other industries are, at times willingly, at times knowingly, facilitating the piracy of American work product, and, by extension, the piracy of American jobs.

I am greatly appreciative to the leadership Chairman Berman has shown on this issue, and I guess I thought we were here as an acting subcommittee of the Judiciary. So I must thank you also, since we are not, since we are here with your Foreign Affairs hat on, Mr. Chairman, to thank you for allowing me to participate as an ex officio member of Foreign Affairs.

Thank you, Mr. Chairman.

Chairman BERMAN. Yes, but I do hope Chairman Conyers understands, we are not asserting authority to pass copyright amendments in the Foreign Affairs Committee. Although—well, no; never mind. [Laughter.]

I want to thank all my colleagues, and sort of the warm-up act, and now for the feature, we really have an exceptionally knowledgeable panel with us today to discuss global protection of intellectual property rights. And I would like to introduce them.

Mr. Steven Soderbergh is the director and the national vice president of the Directors Guild of America. He also chairs the Eastern Directors Council, is co-chair of the Creative Rights Committee, and is chairman of the Eastern Independent Directors Committee.

In 2000, two of Mr. Soderbergh's films, and they were remarkable films, "Erin Brockovich," and "Traffic,"—and "Traffic," having just been to Mexico City, it is like that is playing out in real life—were nominated for a Best Director Oscar, making him the first director since 1938 to receive dual Academy Award nominations in the same year in the directing category. He is a prolific filmmaker, who has directed 20 films and produced numerous others.

Mr. Richard Cook is a 38-year veteran film executive and chairman of Walt Disney Studios. Mr. Cook oversees all aspects of the

developing, production, distribution and marketing for all live action and animated films at Walt Disney Studios.

He is also responsible for Disney's worldwide home entertainment operations, Disney Music Group, Disney Theatrical Group, Disney ABC Worldwide Television, and Disney Media Networks, Disney ABC domestic television, as well as the studio's legal and business affairs in all areas of new technology.

Mr. Michael Miller, Jr., is the international vice president of the International Alliance of Theatrical Stage Employees (IATSE) General Executive Board and also serves as a labor trustee on the Motion Picture Industry Pension and Health Alliance.

He began his career with IATSE in 1990 when he was initiated into IATSE's Stagehands Local 27 in Cleveland, Ohio. In 1993, he was elected to the executive board of that local and served in that capacity until he was elected Secretary-Treasurer in 2003, then joined the IATSE West Coast office as international representative in 2001.

Mr. Zach Horowitz is the president and chief operating officer of Universal Music Group and is responsible for Universal's Music Publishing Group, one of the industry's largest and most successful operations. He also oversees a number of other key areas of the company including Universal Music Group Distribution, Universal's leading distribution operation, which includes Vivendi Visual Entertainment and Fontana.

Mr. Horowitz serves on the board of directors of the Recording Industry Association of America and holds a post on the National Academy of Recorded Arts and Sciences presidential advisory council.

Mr. Horowitz, I will include the statement of the RIAA and Mr. Mitch Bainewalls' September letter to me in the hearing record.

[The information referred to follows:]

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Statement of
Recording Industry Association of America
Before the House Foreign Affairs Committee
Monday, April 6, 2009

Mr. Chairman, thank you for taking the initiative of holding this field hearing on the issue of intellectual property protection in global markets. We commend you for your many years of work based on your recognition that this issue is of great importance to the entire U.S. creative community, as well as to the U.S. economy and to U.S. society as a whole. You have been a tremendous champion for strong and effective copyright protection in global markets, and we thank you for your leadership.

The stakes for our national economy are high. It has been reported, and the Administration has so testified before Congress, that roughly 40% of the U.S. economy is dependent upon IP protection in one way or another, and the core copyright industries are alone responsible for an estimated 6% of U.S. GDP. But the continued growth of this vital economic sector is at risk. You and various members of Congress, and numerous committees, have highlighted the importance of the global fight against piracy, and we need your help now more than ever. Unfortunately, while people listen to more music today than at any point in recorded history, paid consumption is sharply down, as piracy and the acquisition of music through illegal channels continues to skyrocket. Global sales of recorded music in 1999 exceeded \$40 billion. In 2007—the last year for which we have complete annual industry reports, that number was about \$29 million (including digital sales)—a decrease of over 25% in a period of only eight years. The 2008 numbers will continue to reflect a strong downwards trend. Halting this spiral, and creating opportunities for business growth, are critical to ensuring the survival of one of the world's most vital, diverse and competitive industries.

The record industry -- along with the rest of the creative community -- currently faces a piracy phenomenon on two fronts. One involves the physical marketplace, in which we confront increasingly organized and multinational criminal enterprises involved in massive production and trafficking of pirate CDs and other optical media. The second front of the piracy war exists in the online marketplace. Here, too, global criminal organizations are engaged in illegal distribution, but the problem runs even deeper, to generally law abiding citizens who, in the privacy of their own homes (or dorm rooms), are now actively involved in trading or sharing unauthorized recorded music files. The irony is that, appearances aside, the impact of individual activity on the copyright owner is no less prejudicial than other, more seemingly pernicious forms of unauthorized activities. Indeed, it is fair to say that the impact of file-sharing and CD burning on the music industry globally has been much more dramatic than the effects of commercial physical piracy, and has qualitatively (and quantitatively) changed the industry. Therefore, it is necessary that any global IP protection regime address the piracy problem on both of these fronts.

RIAA and the record companies that we represent have employed a multi-pronged strategy to address these challenges. Our members are simultaneously expanding

legitimate avenues for digital distribution through creative new business models and experimental licensing arrangements, and educating the public and our industry partners about the risks involved with piracy and steps they can take to curb infringement.

However, individual record companies, and copyright industry bodies like RIAA, cannot fight piracy on our own. Today's pirates often operate through multinational criminal syndicates, simultaneously involved in replication, printing and distribution around the globe. Today's pirates rely on traditional means of avoiding punishment such as bribery and other forms of corruption, but also have new tools in their arsenal relating to their increased stature--force and other threats of violence, and the ability to rapidly change the location of the various components of their enterprises when confronted with governments prepared to tackle the piracy issues. Pirates actively seek out jurisdictions in which either the law, or lax enforcement, or the general inefficiency and corruption of the judicial system, offer relative safety for their operations. Industry representatives and counsel have in some countries already experienced threats on their lives or physical intimidation when their investigations began to make progress. In some cases, this has prevented any enforcement activity by the private sector.

We therefore look to the U.S. Government for leadership, at home and in bilateral and multilateral settings, to keep intellectual property protection at the top of the enforcement agenda and ensure that law enforcement agencies have the necessary tools and underlying legal framework to accomplish their goals. Adequate enforcement requires adequate resources, and to that end we believe that law enforcement must have dedicated personnel who are focused on seeking out and stopping illegal trafficking in pirated goods. The U.S. government should encourage countries with existing organized crime laws and investigative procedures to bring them to bear against syndicate operations involved in piracy. And where such laws and procedures are not in place, the U.S. government should encourage governments to adopt them and to include, among predicate offenses, intellectual property right violations.

The tools that Congress provided to USTR in the Omnibus Trade and Competitiveness Act of 1988, most notably the enactment of Special 301, have proven to be extremely influential in effecting global change in legislation and enforcement practices, although a great deal remains to be done. The TRIPS Agreement also has particular relevance since it specifically requires countries to not only provide adequate legislation, but to ensure that enforcement thereof is effective. Aggressive and constant monitoring of the implementation of the TRIPS Agreement by our trading partners to ensure compliance with the obligations of the Agreement is of paramount importance, and we salute the work that USTR, working with other USG agencies, does in this regard.

Congress can continue to play a role in helping to ensure that our trading partners meet their obligations to provide adequate and effective copyright protection by holding hearings such as this, by directly reaching out to foreign leaders to stress the importance of effective copyright protection, by ensuring that the Administration has adequate resources to safeguard this unique American asset, and by ensuring that all trade programs, such as GSP, use maximum leverage to require beneficiary countries to provide effective copyright protection. Unilaterally extended U.S. benefit programs crafted by Congress continue to

play a key role in providing incentives to countries to meet their IPR obligations, even in the post TRIPS environment.

One example of this approach is the issue of Russia's accession to the World Trade Organization (WTO). To date, the Russian Government has been unwilling to take effective and sufficient actions against rampant copyright piracy as they are required to do by the bilateral IPR agreement concluded between Russia and the United States in November 2006. We urge that Congress not grant Russia permanent normal trade relations status until such effective action is taken. There have been some promising developments in Russia, but compliance with the bilateral agreement that has been called the "roadmap to WTO accession" has not yet been achieved. We are particularly concerned by three things:

- 1-the lack of government action against the individuals responsible for illegal pay per download sites;
- 2-the lack of government action against the rogue licensing societies that purport to grant licenses for content that they do not control; and
- 3-the failure of the Russian Government to provide accreditation to the international respected society for producers and performers so that legitimate licensing can move forward.

As demonstrated by this example, ensuring adequate and effective copyright protection for our recordings in worldwide markets has become increasingly more complex, as technological advances permit the instantaneous and global distribution of materials with the touch of a button. Finding a way to meaningfully address copyright piracy on the Internet is undoubtedly our single greatest objective.

RIAA members, large and small, have been adapting their businesses to the dramatic changes brought about by the digital age. In the US, only five years after the commercial music download business first truly emerged, 30 per cent of all recorded music sold is online or mobile. Record labels are becoming broad-based entertainment companies, developing new revenue streams. The consumer has better choice, availability and flexibility in enjoying music than ever before. Digital revenues are growing and diversifying as business models change from one dominant format to hundreds of channels and products.

However, while broadband Internet access offers exciting prospects for the legitimate dissemination of copyrighted materials of all kinds, too often high-speed Internet connections are being used to distribute unauthorized copies of sound recordings, software, videogames, literary material, and motion pictures. The unprecedented growth of the Internet and increased availability of broadband connections, coupled with the absence of adequate copyright law and/or enforcement in the online environment in many countries, has provided pirates with a highly efficient distribution network to reach the global market. Pirates offering and distributing infringing product can now reach any part of the world with ease, no matter where they are physically located. Consequently, the U.S. copyright industries face the daunting task of trying to enforce their legal rights in an online world where borders and distances have decreasing practical significance, and where anonymity is claimed.

One of the most troubling situations in this regard, not surprisingly, is found in China. So-called “deeplinking” websites are the most significant cause of online copyright piracy in China; at least seven MP3 search engines offer such “deep links” in China to millions of infringing song files and derive significant advertising revenue from doing so. The largest and most troublesome of these services is Baidu, which is responsible for nearly 50% of the internet-based piracy of recordings in China, and is undoubtedly the biggest music pirate operation in the world. For the benefit of the Committee, we have also attached a copy of RIAA’s letter to Congressman Berman of September 25, 2008 that provides more information on particular companies whose business models are predicated upon providing access to infringing materials.

What tools do we have to respond to this type of online piracy where legal action by the industry does not suffice? First, of course, we have the framework of international trade law discussed above. We applaud the U.S. government for the actions it has taken in the WTO and through bilateral consultations to make China accountable for its piracy problem. But industry and government must also work together to address the particular legal and technological challenges of the electronic marketplace.

The WIPO treaties adopted in 1996 set the stage for fair international digital distribution of music. While incomplete, these treaties represent significant and necessary improvements in the international legal structure. Of greatest importance, the treaties make it absolutely clear that copyright holders are permitted to control the electronic delivery of their works to individual members of the public. This both anticipated and responded to the realities of the electronic marketplace, where copyright owners rely increasingly on the communication of signals rather than the delivery of physical products to meet consumer demand. This level of copyright protection, in conjunction with technical protections (also addressed in these treaties), is key to encouraging copyright owners to make their works available through these new media.

Fortunately, the WIPO treaties have been widely ratified and implemented, and have been firmly established as cornerstones of a modern copyright system. Unfortunately, however, the strains of technology and realities of the marketplace are beginning to reveal the limitations of certain aspects of the treaties. In particular, while the treaties set out a modern normative structure for the appropriate contours of copyright protection, and require effective enforcement against piracy and counterfeiting, they do not adequately set out sufficiently detailed and specific requirements about how to ensure the enjoyment of such rights in the digital marketplace—and in particular the role of intermediaries in cooperating with copyright owners to prevent the use of networks in the transmission of infringing materials .

It is critical, therefore, that the marketplace, with government support, work to develop some of its own solutions. To that end, RIAA and other content industries have been engaging in dialogue with our industry partners to find new ways to cooperate in the fight against piracy. In particular, we have been talking with Internet Service Providers (ISPs) to discuss the role they can play in protecting copyrighted content, and we are pleased to report that we have started to see some success. ISP responsibility is becoming an accepted idea, and while we prefer the kind of flexible solutions that can be worked out in

the marketplace, it is clear that governments have a responsibility to ensure that solutions are indeed produced.

This is a critical development, because until now ISPs have not adequately responded to the massive theft that is occurring through their proprietary networks. Copyright theft has been allowed to run rampant on their networks under the guise of technological advancement. Some estimates say no less than 80 per cent of all internet traffic comprises copyright-infringing files on peer-to-peer (P2P) networks. ISPs have largely stood by, allowing a massive devaluation of copyrighted music. This in turn – and despite all the positives about our digital growth – has prompted a crisis in recorded music that has wide implications for the whole digital marketplace and all those businesses for which music is an important ingredient.

Today, however, a sea-change is underway. The music sector, governments and some ISPs themselves are beginning to accept the notion that the carriers of digital content must play a responsible role in curbing the systemic piracy that is threatening the future of all digital commerce. In France, the Olivennes Agreement, announced in November of 2006, is the most significant milestone yet in the task of curbing piracy on the internet. It sets up a groundbreaking three-way partnership between the creative sector, ISPs and government. It takes the protection of intellectual property online into new territory, requiring ISPs to disconnect copyright infringers who continue to infringe after receiving multiple notices from their ISP.

The principle behind the plan – that ISPs have a responsibility to address the use of their networks in the commission of copyright offenses – sets an exciting example internationally. Similar movements are happening in different parts of the world: new legislation engaging ISPs in New Zealand, Taiwan and Korea; and intensifying intra-industry discussions in other countries. In Ireland, the largest ISP (Eircom) recently agreed to adopt a system of graduated response, and industry wide discussions are underway in Australia, Japan, the UK, Spain, Italy, Mexico and Brazil. In the US, some ISPs have begun to demonstrate cautious leadership, acknowledging their responsibility to protect content and looking at filtering technologies with the music and film industries. We are not recommending a regulatory approach here, but rather are looking to voluntary marketplace solutions to address these vital issues. We have made some progress to date, but we have a long way to go. Congress should encourage ISPs to work with us to address online piracy.

As we know from our own experience here in the U.S., we must find a global solution that discourages unauthorized peer-to-peer file sharing, through aggressive enforcement against unauthorized uploaders of infringing product, as well as against services that encourage and profit from copyright infringement. For new legal online services to succeed, we must ensure that such services do not face unfair competition from unauthorized sources. And in particular we need to ensure that all parties involved in the transmission of infringing content are encouraged to cooperate in the fight against piracy, so that we can build a legal and technological architecture that promotes greater accountability on the Net.

It is critical that governments, educational institutions and similar enterprises that provide broadband connections to their employees, students or consumers be encouraged to take steps to curb the illegal file-sharing of copyrighted materials. Industry has been hard at work on these critical issues, but we need the help of the U.S. and foreign governments to make the Internet safe for e-commerce in copyrighted material. Furthermore, renewed emphasis on law enforcement training is vital to giving enforcement authorities the tools they need to quickly locate infringing Internet sites and pursue actions against the offenders who commit the most damage and/or refuse to remove the infringing content. Public education about the dangers of online infringement must be emphasized as well. As global boundaries continue to lose much of their practical relevance because of Internet growth, so must the usual lines separating the roles of industry and government in policy, enforcement and education. Close coordination will be the key to success in this challenging new environment.

CONCLUSION

Effectively addressing piracy in all of its variants is a key economic and cultural objective for the United States, and Congress, the Administration and the private sector must work together to achieve this goal. Trade pressure and capacity building continue to be primary mechanisms for encouraging foreign nations to address inadequacies in their legal and enforcement framework, and we urge Congress to ensure that the Administration has all the possible tools at its disposal to exert such pressure. To this end, it is critical that the Administration be funded in such a way as to permit them to use their powers to the maximum extent, and we hope that Congress will not be penny wise and pound foolish in its appropriations involving the protection of some of America's most creative, vibrant and profitable industries. It is also important to recognize the limitations of a sanction-based trade policy in effecting IPR reforms, and we urge you to find mechanisms for rewarding good practices as well as to sanction bad ones. You should encourage industry to work together to develop best practices and marketplace solutions, and call upon relevant foreign officials to encourage global ratification of the WIPO Treaties.

We can and must prevail in these initiatives.

MITCH RAINWOL
CHAIRMAN AND CEO



September 25, 2008

The Honorable Howard I. Berman
Chairman Judiciary Subcommittee Courts, The Internet,
And Intellectual Property
2221 Rayburn House Office Building
Washington, D.C. 20515-0528

Dear Mr. Chairman:

I was very pleased to receive your letter dated July 23 asking for information about the most prominent companies that engage in piracy, whether directly or by virtue of their inducing or otherwise facilitating infringement by others. As you state so correctly, there are far too many companies that have business models completely predicated upon infringement. Some of these openly violate the law or depend upon lax enforcement to stay in business, and some try to construct their businesses to avoid liability while depending upon infringing transactions. I have attached a report that includes examples of companies that manifest each of these criteria. I hope that you find it useful as you progress in your thinking about how to fashion policies that will: (1) strengthen the ability of the US to respond to international piracy; (2) encourage greater accountability on the part of all companies involved in the storage, transmission or distribution of copyright materials; and (3) expand the opportunities for the American (and foreign) creators in an increasingly complicated environment. There is a great deal at stake, and we are extraordinarily fortunate, and thankful, to have your interest, leadership and determination.

As you know well, piracy saps the economic strength of the US and prejudices our competitiveness. Of equal or greater moment is the fact that it undermines the spirit of creativity, bold innovation, and fierce individualism that form the foundation of this country's identity. Clearly there are many obstacles to addressing international piracy, ranging from corruption, the absence of the rule of law, protectionism, lack of

understanding, lack of will, and lack of capacity. But each of these can—and must, be addressed. Most of all, we need to begin by demanding greater accountability on the part of corporate actors who know better, but who conduct businesses wholly dependent upon infringement nonetheless. Your initiative couldn't be better timed in helping to shine the light on some of these enterprises.

Perhaps the most glaring example is Baidu in China. Baidu accounts for the distribution of an estimated 50% of the infringing files in China, and uses its infringing music service as a gateway to the rest of its services. According to an article that just appeared in *The Register* last week, Baidu has created an architecture under which it can harvest its own virtual farms of infringing files, ensuring that its users will enjoy uninterrupted access to infringing files. Amazingly, they don't even ever link to legitimate materials—only to infringing files! The report also details our efforts with respect to trying to address all of the allomp3.com clones in Russia, as well as a status report on the Pirate Bay which, as evidenced by its name, makes no attempt to hide its mission (only its funding). In order to capture the range of activities that confront us in the current environment, we also detail the continuing problems that we have had with a CD plant in Ukraine (Rostok), and the lack of government accountability with respect to a government owned network in Taiwan (TANet).

I hope that this report is useful. Please do not hesitate to contact me if you have any questions or if there is anything else that we can provide. And thanks again for your dedication to the mission of expanding opportunities for America's creators. We are in your debt. With kind regards and appreciation,

Sincerely,



Mitch Bainwol

Attachments: as stated

SWEDEN: The Pirate Bay

The Pirate Bay ("TPB") is a service based on Bittorrent technology, which facilitates access to over 1.3 million files including music, movies, games and software. TPB is one of the most popular Bittorrent services in the world. The service is translated into 30 different languages and claims to have 10 million users. Estimates indicate that over 90% of the material available on the service infringes copyright.

The service is operated by three individuals who live in Sweden: Peter Sunde, Frederik Neij and Gottfrid Swartholm. It is hosted partly in Sweden and partly in the Netherlands. The operators refuse to take any steps at all to stop infringement. They ignore take down requests from right holders - in fact these are posted on their site and made fun of. In addition they regularly speak out against right holder groups, claiming to be proponents of free speech. In fact, documentary evidence that has been made public demonstrates that the group is motivated only by money and that they receive substantial advertising revenues that are hidden in offshore bank accounts.

Several right holder groups including record companies filed a criminal complaint against TPB in early 2006. In May 2006, Swedish police conducted raids on two premises in Stockholm and seized evidence and computer equipment. We were hopeful that this would lead to a swift resolution of the problem. Unfortunately, the criminal process in Sweden has been extremely slow. Now, over two years later, the service is more popular than ever and, at the date of this letter, no date has been scheduled for the criminal hearing. Following the initial raid, there was a delay of 18 months until charges were filed in January 2008. We understand that the hearing is now unlikely to occur in 2008, we are informed this is because the defendants' lawyers cannot fit the hearing into their schedule for this year.

The record industry has offered its full assistance to the prosecution team and to the police and we have encouraged the court to schedule a swift hearing. Due to the ineffectiveness of action in Sweden, civil cases have been commenced in other countries including Denmark and Italy. The aim in those cases is to obtain orders requiring ISPs to block access to TPB to limit the massive damage that is occurring each day in those and other markets.

CHINA: Baidu/Yahoo China/Sohu

Baidu, Yahoo! China and Sohu/Sogou are all major search operators in China each offering a similar specialised music search service, in addition to the usual services. Their activities in relation to music, however, go a long way beyond mere searching, with each dedicating an entire section of its site to the delivery of music to its users. By entering the name of an artist or track, a user is provided with *deeplinks* to infringing copies of sound recordings allowing the user to stream or download these tracks for free without ever leaving the operators' site. Many thousands of local and international tracks are available. Although the sound recordings are arguably¹ hosted by third parties, all these activities take place within the search operators' environment and all of the operators generate revenues from advertising to their users seeking music. In addition, the operators compile charts and lists, such as "New releases", "Top 500", "European and US songs" etc. which also provide the user with *deeplinks* to infringing music, but without them having to enter specific search terms.

The principal strategy against each of these services has been to take civil proceedings in the Chinese courts (following correspondence requesting them to stop infringements). Even though the Beijing appeal court last year found Yahoo! China jointly liable for the massive

¹ A recent article that appeared in The Register has concluded that many of the links are to supposedly third parties that can not be accessed except through Baidu, and that Baidu itself essentially seeds and then harvests virtual farms of infringing files. (see www.theregister.co.uk/2008/09/13/baidu_investigation/)

infringement taking place, there are serious issues with the Chinese system that prevent the infringement being stopped.

Critically, broad injunctive relief protecting all or a meaningful proportion of a record company's repertoire is not available. Injunctions were granted against Yahoo! China, but only in relation to the small sample of repertoire for which it is possible for the plaintiffs to meet the court's extremely burdensome evidential requirements in terms of ownership and infringement. Thus despite a clear finding of liability, Yahoo! China is only required to take down links to 200 or so tracks, which, even if taken down, would not have any meaningful impact given the hundreds of new releases since the claims were filed.

Compounding the problem are the lack of effective proceedings to enforce court orders and the lack of penalty provisions against defendants that fail to comply with them. Despite being ordered in December 2007 to take the links down immediately, Yahoo! China continues to refuse to do so, and, the damage to the plaintiffs continues. To date, the court has been unable to force them to comply and, without anything akin to contempt proceedings available, there is little risk to Yahoo! China in not doing so.

Civil proceedings against Baidu and Sohu/Sogou have also been filed and are due to be heard in October 2008. Despite the clear legal precedent against Yahoo! China, there are serious concerns that nothing the court does will prevent Baidu, Yahoo! China and Sohu/Sogou from continuing to infringe with the litigation being little more than a cost of business to them. Moreover, China boasts of its extensive system of administrative remedies which have thus far not been utilized notwithstanding the determination of the Court that the practice of deeplinking to infringing files is prohibited by Chinese law.

RUSSIA: Illegal Music Download Websites

First appearing in late 2003, a significant number of services operating from Russia now offer large catalogues of local and international music for download at very low prices. Users can access the services from all around the world, and can use a number of payment methods. The services are not licensed to sell RIAA members' repertoire anywhere, but seek to justify their activities by relying on illegal licenses from rogue organisations in Russia. The most notorious of these was Allofmp3.com - now closed down - but around 30 other sites continue to operate on exactly the same basis.

A wide range steps have been taken in relation to Allofmp3 and the other sites including takedown requests, civil proceedings and criminal complaints in Russia, civil and criminal proceedings in a number of other jurisdictions and seeking cooperation from the credit card companies and other payment providers to prevent payments being made.

Problems have arisen with each of the approaches taken against Allofmp3 and the other services, as follows. Three criminal complaints were filed in Russia in 2005 and 2006 regarding Allofmp3 alone. With the exception of the first of those, the complaints have not been pursued by the authorities with due diligence or at all. The one that was pursued led to the acquittal of the former director of Allofmp3 in thoroughly unsatisfactory court proceedings in late 2007. Successful civil proceedings in Russia have been taken against a number of sites, with judgments rendered against two sites (mp3search.ru and mp3spy in late 2007 and early 2008), but injunctions covering ALL unlicensed repertoire are not available, meaning that only a small sample of unlicensed repertoire is taken down (if any), therefore having little or no commercial impact on the services.

Outside of Russia, civil proceedings regarding Allofmp3 were commenced in Germany (May 2005), Denmark (October 2006), the UK (June 2006), the US (December 2006) and France (April 2008). In Denmark and Germany injunctions were obtained, but neither of these forced the Russian business itself to take action. The US and UK cases have not proceeded since the site closed. However where civil courts do rule against these illegal services, the effect is most likely limited to the single jurisdiction of the case, and where this relies on

enforcement of the judgment in Russia another series of hurdles arise, meaning the judgment may have no impact on the service at all.

Cooperation from payment providers has caused material disruption to the services, though increasingly sophisticated payment mechanisms mean that this is not a solution in itself. Visa and MasterCard themselves agreed to withdraw their respective services from Allofmp3 in October 2006, and Visa then continued to cooperate on similar services right up until July 2008. Since 2006 MasterCard has taken limited action and, significantly, both Visa and MasterCard now refuse to cooperate at all unless fully indemnified by the industry for any loss they may suffer, including loss arising even though the industry's representations of the services' illegality are not in question.

UKRAINE: Rostok CD Plant

Rostok CD is one of the largest optical disc ("OD") manufacturers in the Ukraine. Following recovery in 2004 of pirate discs traced to Rostok, IFPI filed complaints against Rostok with the Ukrainian State Department of IP (SDIP). Although the SDIP conducted one questionable 'surprise inspection', there were no follow up inspections or checks and neither administrative nor criminal action was taken.

In the absence of effective action by SDIP, the rights holders were forced to file civil claims with the Kiev City Commercial Court in mid-2006. These civil claims have been met with an ongoing series of procedural and legal hurdles and obstacles including the courts disregarding established practice and procedure and mishandling evidence, Ministry of Interior forensic experts issuing inaccurate/incomplete examination reports, conflicting statements made by the State Depository, and the separation of the action against Rostok into six separate cases before different judges despite the need to forensically compare discs in all cases. Two years after commencement of the action and at great expense to the right holders, all cases except one still await first instance decisions.

The one case that has progressed from first instance has been appealed through three different courts. It was initially decided in Rostok's favour on grounds that the court misinterpreted and misapplied Ukrainian law and failed to take into account pertinent evidence. This decision was overturned by the appeal court, but on further appeal, the Higher Commercial Court of Ukraine (HCCU) cancelled that decision and ordered a new first instance trial.

The reasons for the HCCU's decision are extremely concerning. Amongst other things, it implies that proof of ownership of authors' rights is needed in sound recording copyright cases and it in effect curtails the ability of rights owners to gather evidence against suspected infringers. The Supreme Court has refused to hear an appeal from the HCCU's decision and the case will now be heard *de novo*. The Rostok plant continues to operate.

TAIWAN: TANet

TANet (Taiwan Academic Network) is the Taiwan government's university computer network operated by the Ministry of Education (MOE). Originally established for educational and research purposes, TANet now has an estimated 4.48million users and is being widely used for internet piracy including unauthorized P2P file sharing (for example via the P2P service "FOXY") of all types of copyright material including music and movies as well as academic texts and journals.

Over the past two years, rights holders have been urging the MOE to address the illegal P2P file sharing occurring on TANet. In response to urgent rights holder requests, the MOE did adopt an action plan in the spring of 2007 and a special taskforce consisting of government agencies and rights holders was set up to monitor the implementation of the plan. However, the taskforce meets irregularly and infrequently, no uniform policies have been put in place

across educational institutions, and there is no enforcement or monitoring by MOE of compliance. These steps have therefore failed to implement any effective and deterrent policies or penalties for online infringements occurring over TANet.

Over a year ago, the recording industry provided to MOE and the universities specific evidence of infringements by students on TANet. The MOE/universities have not reported back to the industry on any action that has been taken on the basis of this information. Criminal complaints have also been filed by right holders against the P2P service FOXY, however, despite this, use of FOXY on TANet continues unabated. While the record industry confronts issues related to the use of networks for infringing transactions globally, TANet is unique inasmuch as it is a government owned service, making the lack of sufficient oversight an act of commission by the government rather than omission.

Chairman BERMAN. And finally, we have Timothy Trainer, the founder and president of Global Intellectual Property Strategy Center, an intellectual property legal consulting firm. Mr. Trainer's career includes work with the U.S. Government in the intellectual property rights branch of the U.S. Customs Service, and in the Office of Legislative and International Affairs for the U.S. Patent and Trademark Office.

Mr. Trainer worked for the law firm, Archer and Haddon, and served as a past president of the International AntiCounterfeiting Coalition. His work has included representing the United States at the World Intellectual Property Organization, representing the industry at INTERPOL's IP Crime Action Group, and co-chairing the U.N.'s Economic Commission for Europe's IP Group.

All of your written statements will be a part of the record. If you could try to summarize your statements in about 5 minutes. We are not going to pound the gavel. We have looser, California laid-back rules here. But we will sort of lightly touch the gavel when you are getting as long as we have been.

And Mr. Soderbergh, why don't you begin.

**STATEMENT OF MR. STEVEN SODERBERGH, NATIONAL VICE
PRESIDENT, DIRECTORS GUILD OF AMERICA**

Mr. SODERBERGH. Good morning. I am honored enough to be here, and respectful enough of your time to speak briefly and plainly. We are here to talk about piracy, primarily Internet piracy, and while I am here officially representing the Directors Guild, I would like to speak to you personally.

I am a film maker, and so by some loose definition, I am also an artist, but since the subject of art is very subjective, I want to talk about numbers, because numbers are not subjective. Numbers are, inarguably, what they are.

So here are a few numbers to think about. In 2007, the entertainment industry, despite the piracy figures mentioned by the chairman, generated a trade surplus of \$13.6 billion.

In 2005, the entertainment industry generated 1.3 million jobs, over \$30 billion paid in wages, and over \$30 billion paid to vendors and suppliers. That generated \$10 billion in paid taxes.

As strong as those numbers are, we could do more. We could make an even larger contribution to the economy, if it weren't for theft, in the form of piracy.

I won't bore you in this verbal testimony with figures of how piracy has affected my own work, because I am not an exceptional case here. Everyone is hurt by this.

Most people see the entertainment industry as a bunch of pampered celebrities. I see it that way, sometimes, and I wish my saying that that's not true could just instantly dissolve that illusion.

Certainly, Michael Miller will attest to the fact that most people that work in this industry are resolutely middle class and are largely living paycheck to paycheck. But let's set aside this issue of perception for a moment and get back to the numbers.

I guess my question is: If the automobile industry told you that 25 percent of its cars had gone missing, from leaving the assembly line to getting to the car lot, you would have the Department of Justice doing wind sprints to figure out how to solve this. We are facing a very similar situation.

Piracy increases unemployment by reducing the revenue paid to the people providing that employment, and that results in lost jobs.

What is our solution here? Well, this is what we know. Litigation is slow and the Internet is fast. This may not be the best time to speak about self-regulation, but I don't think it makes much sense for us to ask the Government to be the police in this issue.

What we would like is to be deputized to solve our own problems. We would like to be granted the kind of pull-down and inspection abilities that we are seeing proposed in France, so that we can act swiftly and fairly on our own behalf. IF we are given this ability, I feel we can figure out a way that is efficient and creative to make piracy a difficult last resort instead of a best first option.

The other reason to do this is that it will allow the industry to retain and continue to create jobs without asking for taxpayer assistance in the form of Government intervention.

Forty years ago, as some movies targeted for adults began to show the world as it is instead of as we might wish it to be, censorship bodies sprung up all over the country to determine whether each film complied with community standards, and film makers were faced with the possibility of having to screen their films for every one of these groups before they could present their work to the public.

this was impractical, to say the least, and a subsequent court ruling deemed that it was illegal as well. The solution was the creation of the MPAA, which established a ratings system that we still use today. It works and it doesn't cost the taxpayers a single penny.

The extreme level of competition at all levels of this business has resulted in an intelligent hard-working, capable workforce, and this business is actually remarkably transparent when you compare it to other businesses of similar scale. It is for these reasons I ask you to empower the industry to confront this problem, which extends to every country and every content provider in the world.

Since the United States is the world's largest exporter of entertainment, I believe we have an obligation to create a new paradigm for combating piracy. I don't think it is going to happen without a

fresh approach to the way the Government and the rights holders interact. I am here as a member of the creative community, to tell you that we are ready and able to confront this problem.

I would like to submit some additional materials for the record which will provide details on the impact of piracy on my own films, as well as our thoughts on the French solution, and other DGA suggestions for Congressional action on this matter.

Thank you for your time.

[The prepared statement of Mr. Soderbergh follows:]



STATEMENT OF

Steven Soderbergh
On Behalf of the Directors Guild of America

Before the

House Committee on Foreign Affairs

Hearing on "Sinking the Copyright Pirates: Global Protection
of Intellectual Property"

April 6, 2009
Los Angeles, CA

Good morning.

My name is Steven Soderbergh and I'm the National Vice President of the Directors Guild of America. I am honored enough to be here and respectful enough of your time to speak plainly and briefly.

We're here to talk about piracy—primarily Internet piracy—and while I am here officially representing the DGA, I would like to speak to you personally.

I am a filmmaker, and so by some loose definition I'm an Artist, but since of Art is subjective, I want to talk about numbers, because numbers are not subjective; they are inarguably what they are.

Here are some numbers:

In 2007, the entertainment industry generated a trade surplus of 13.6 billion dollars.

In 2005, the entertainment industry generated 1.3 million jobs, over 30 billion dollars paid in wages, over 30 billion dollars paid to vendors and suppliers, and 10 billion dollars in paid taxes.

As strong as those numbers are, we could do more, we could make an even larger contribution to the economy, if it weren't for theft, in the form of piracy.

I won't bore you in this testimony with figures of how piracy has affected my own work, because I'm not an exceptional case; everyone is hurt by this.

Most people see the entertainment industry as a bunch of spoiled celebrities, and I wish my saying that it's not true could dissolve that illusion. Certainly Michael Miller will attest to the fact that most people working in this industry are resolutely middle class and living to a large extent from paycheck to paycheck. But let's set aside this issue of perception and get back to the numbers: If an automobile manufacturer told you that 25% of its vehicles had gone missing on their way from the plant to the car lot, you would have the Department of Justice doing windsprints until the problem was solved.

Piracy increases unemployment by reducing the revenue paid to the companies that provide employment, and lost revenue means lost jobs.

What's the solution? Well, this is what we know: Litigation is slow, and the internet is fast, so it doesn't make sense to ask the government to be our police. What we would like is to be deputized to solve our own problems, to be granted the kind of pull-down and inspection abilities being proposed in France, so we can act swiftly and fairly on our own behalf. If we are given this ability, we will figure out an efficient, creative way to make piracy a difficult last resort instead of an easy first option, and we will do it without clogging the world's courts. This will allow the industry to retain and create jobs without asking for taxpayer assistance in the form of government intervention.

Forty years ago—as some movies targeted for adults began to show the world as it is instead of how we would wish it to be—censorship bodies sprung up all over the country to determine whether each film complied with community standards, and filmmakers were faced with the possibility of having to screen their films for every one of these groups before they could present their work to the public. It was impractical, to say the least, and a subsequent court ruling deemed it illegal as well. The solution was the creation of the MPAA, which established a ratings system that we still use today. It works, and it doesn't cost the public one penny.

The extreme level of competition at all levels of this business has resulted in an intelligent, hard-working,

capable workforce, and the economic structure of this business is remarkably transparent when you compare to industries of similar scale. It is for these reasons I ask you to empower the industry to confront this problem, which extends to every country and every content provider in the world.

Since the United States is the world's largest exporter of entertainment, I believe we have an obligation to create a new paradigm for combating piracy. But it won't happen without a fresh approach to the way the government and the rights holders interact. I am here as a member of the creative community to tell you we are ready and able to do our part.

I would like to submit some additional materials for the record which provide details on the impact of piracy on my own films, as well as our thoughts on the French solution and other DGA suggestions for Congressional action on this issue.

Thank you for your time.

Chairman BERMAN. Thank you, and the additional submission will be included in the record of this hearing.
[The information referred to follows:]



ADDITIONAL SUBMISSION BY THE DIRECTORS GUILD OF AMERICA

For the

House Committee on Foreign Affairs

Hearing on "Sinking the Copyright Pirates: Global Protection of Intellectual Property"

April 6, 2009
Los Angeles, CA

The Directors Guild of America would like to thank Chairman Berman, Ranking Member Ileana Ros Lehtinen and members of the House Foreign Affairs Committee for hosting a hearing to discuss the issues of global piracy and the protection of intellectual property.

Founded in 1936 by the most prominent directors of the period, the Directors Guild today represents 14,000 directors and members of the directorial team who work in feature film, television, commercials, documentaries, news and new media. The DGA's goal is to ensure that our craft continues unimpaired for the benefit of people worldwide, and that our members continue to be able to earn their living giving their talent to a craft they love. The Guild does this by protecting the economic and creative rights of directors and the directorial team.

Global piracy is a huge threat to the economic and creative health of the entertainment community. This is not an exaggeration. Nor is it an inevitable outcome. It is an acknowledgement of a reality we face which must be addressed because our ability to create and finance films is at risk. For that reason, all of us who work in film and television have a tremendous stake in this problem. That includes those whose names are well known and it

includes the hundreds of thousands more whose names are not known but who depend on the business of entertainment to support their families.

With the advent of the Internet—and all the promise it brings—there has arrived at our doorstep the threat of online piracy. This is very different from physical piracy and is in many ways a greater threat that has not been fully recognized. The theft of an entire movie, difficult to achieve before, is now easily accomplished by many. Because those who want to pirate films or television shows can instantaneously and illegally upload them and then allow others to just as illegally stream or download that digital copy, suddenly the “fruits of our labor” takes on a whole new meaning.

Directors stand at the very intersection of technology and creativity. From that perch, we embrace what the digital world enables us to do and we acknowledge that it is an extraordinary tool for exchange and commerce around the world. But we also believe that within that free exchange of ideas and information must be embedded an acceptance of the importance of protecting intellectual property—and the tools that are needed to make that a reality.

Examples of Digital Piracy’s Impact on Individual Films

In 2007, Steven Soderbergh’s “Oceans 13” was released in theaters. The film’s domestic box office was \$117,154,724 and the film’s worldwide grosses were \$293,836,46. In just the first 3 months, “Oceans 13” had been illegally downloaded through peer-to-peer networks nearly 6 million times. If we imagine that just 25% of those who downloaded the film illegally would have otherwise seen the film in theaters or bought or rented the DVD, we can estimate that online piracy cost us \$22.5 million – a figure that represents nearly 8% of worldwide box office.

The impact of peer-to-peer downloading on Soderbergh’s “The Good German” is far more destructive. This film, made in 2006, had a domestic box office of \$1,308,696 and worldwide gross of \$5,895,038. In the first three months after its release, there were 742,930 downloads. Again if we assume that one quarter of those would have otherwise seen the film legally, the piracy cost us \$2,785,980. And for this smaller film, that figure represents 47% of the

worldwide box office and more than DOUBLE the domestic box office. The point this clearly underscores is that piracy has the potential to completely put non-blockbuster, smaller films out of business.

Last Tuesday, a pirated copy of Gavin Hood's about to be released film "X-Men Origins: Wolverine" was put online and downloaded hundreds of thousands of times in its first 24 hours on the Internet. The damage to this film is yet to be calculated.

User-Generated Content Sites

Another way piracy is being made more accessible for consumers is the growth in "User-Generated Content" (UGC) sites around the world that allow films to be uploaded illegally and then streamed, rather than downloaded, illegally by users. China is particularly noteworthy for its rampant piracy through these UGC sites, which, frankly, we understand is permitted by the Chinese government which issues licenses for the operation of these sites.

It is worth noting that a few years ago, infringing content was rampant on UGC sites like YouTube and its rivals. However, a little over a year ago, the major western UGC sites – including YouTube, MySpace, Daily Motion, and Veoh - began to institute "content recognition" filtering. As a result, the amount of infringing content on these sites has been dramatically reduced.

But the full story is not told in just dollars and cents. Film is the lens through which we tell the story of our culture to ourselves and to the rest of the world. The work we do is a rich part of the fabric of America and has been for almost a hundred years. More importantly, it is not created in a vacuum nor can it easily exist if it is not supported.

There is no question that the Internet has eliminated geographic boundaries and allowed digital theft to take place at lightning speed on any continent. That is why it calls for a fight that is global in nature and international in its scope and understanding.

In the DGA's discussions with fellow filmmakers and the organizations that represent them in other countries, we have seen how the similarities between our efforts, the efforts of the opposition, and the need for reasoned solutions are far greater than any cultural differences.

French Proposed Solution

The French National Assembly last week passed a major legislative initiative called the "Creation and Internet" law. This is an effort to combat online piracy by giving warnings to those who use the Internet to steal intellectual property for their first two infractions and finally denying them Internet access for a period of one to three months after the third infraction. In this model, the ISPs become partners in creating a deterrent against persistent infringers. We think there is great promise in this approach. And French directors – who see the risk to their filmmaking in the same way we do – have been in the forefront of this debate in France. For them and the rest of the artistic community who are leading this fight, their guiding principle is that "culture is not free."

Other anti-piracy initiatives are taking place in the United Kingdom, and across Europe, before the European Parliament, and in countries like New Zealand. Unfortunately there has been strong opposition to government efforts by those who seek to devalue intellectual property.

We understand that it will be virtually impossible to eradicate piracy entirely. In fact, many of the changing business models in the entertainment industry are an attempt to work around piracy. But we must develop a method for preventing piracy from overwhelming our creative endeavors entirely, or else we risk doing permanent and irreversible damage to our industry.

If we may, we'd like to suggest four possible courses of action for the Committee and Congress.

First, we cannot fight this battle alone. Some of the worst offenders are located in other countries. We must engage our international partners in this effort, and we'd like to suggest to this Committee that it encourage the Obama Administration to ensure that issues of intellectual property protection be prioritized in all bilateral and multilateral economic and trade discussions.

For example, the US-EU Summit, the G8 process and APEC have all prioritized IP enforcement and better global coordination. These efforts must continue.

We would also urge Congress and the Administration to support the ongoing discussions with several major trading partners regarding the Anti Counterfeiting Trade Agreement (ACTA). ACTA has the potential to make significant improvements to global IP enforcement and contains important provisions to address Internet piracy.

Specifically, in the case of China, if the government is either directly or indirectly enabling sites to post and even profit from the uploading and downloading of illegal content, this Committee and the Administration should actively urge the Chinese to employ mechanisms that have been proven to cut down on piracy in the United States, Europe and even in China during the Olympics.

Second, there should be full funding for the implementation of the Pro IP Act which was signed into law last fall. This legislation contains law enforcement mechanisms that can be added to our government's arsenal.

Third, we urge you to examine efforts being undertaken in other countries to fight piracy of creative content and how those efforts might prove useful as the Congress frames its own solution.

Fourth, we urge you to help our industry work with the Obama Administration and Congress to ensure that legislative and regulatory measures that promote and open and innovative Internet also prioritize the protection of legal content.

Finally, we would like to ask that as the Committee considers various means at its disposal to address piracy and content protection on an international level that directors and other members of the creative community be part of those discussions. Directors are problem-solvers by nature, and the Directors Guild of America is an international organization with members who live and work all over the world, and we have strong relationships with our sister directors organizations

and rights societies in many other countries. We know that this issue calls for thoughtful policy and reasoned dialogue—at an accelerated pace—and we offer you our help in your efforts.

Thank you.

Chairman BERMAN. And Mr. Cook.

STATEMENT OF MR. RICHARD COOK, CHAIRMAN, THE WALT DISNEY STUDIOS

Mr. COOK. Mr. Chairman, thank you for convening this hearing today. No issue is more important to The Walt Disney Studios than the protection of intellectual property. Intellectual property is the core of our business. The ability to protect that intellectual property is what drives our ability to continue investing in new creativity, to tell new stories, and to keep innovating.

These are challenging times for the entertainment industry. Movie studios, like other companies, have had a difficult choice in these tough economic conditions. Yet the motion picture industry maintains great promise as a truly unique American industry with a strong history of creating high-paying jobs and contributing to local economies across the United States.

Now, more than ever, we should encourage policies that promote investment in this type of creativity. We are facing a sea change in the nature of the piracy challenge. Gone are the days when borders provided a barrier to trafficking in pirated goods. No longer do we live in a world where piracy is confined to a small number of large criminal syndicates.

Today, the actions of a single individual can feed an entire chain of online and offline piracy. Most importantly, what happens in one country now has a profound impact on businesses in other countries.

Let me share with you an example that illustrates the international scope and complexity of the piracy challenge.

Last year, we released “Wall-E,” a wonderful Disney-Pixar film that won the Academy Award for best animated film. The film was released in theaters in the United States on June 27. It was released in the Ukraine a week later, on July 3rd. On July 5th, a copy of the movie that was camcordered in a theater in Kiev appeared for the first time on a Russian Internet site.

Within 2 days, copies of the same version appeared on a peer-to-peer site. Within 7 days, copies were uploaded on 13 other Internet sites. Within 10 days of the film’s Ukrainian release, there were copies online in Russian, English, Spanish, Dutch and Mandarin.

The same copy served as a master for physical copies, worldwide. This DVD copy was found in Kiev 1 day after a copy first appeared on the Internet. One day later, a second copy was purchased in Chicago. The next day, a third copy was purchased in Lima, Peru.

A week later, these copies were purchased in Guadalajara, Mexico, and New York City. By July 31st, copies of the same version were purchased in Argentina, Indonesia, Philippines, the U.K., China, Canada, Turkey Hungary, Japan, Russia, Chile, Australia and Brazil.

In total, 54 purchases were made, all sourced from the same copy. Camcording is a major concern. More than 90 percent of recently-released movies on counterfeit DVDs can be sourced to illegal camcording.

The camcording also demonstrates that the combined efforts of industry and Government can make a difference. In 2005, Mr. Chairman, you joined with then-Chairman Smith, and Senators Feinstein and Cornyn, to pass a law making unauthorized camcording a Federal crime. The impact of this law has been dramatic.

In 2004, New York was the center of illegal camcording activity. That year, there were 113 camcorded copies traced to New York theaters. In 2008, there were nine.

In the 50 States put together, the number of camcorded copies in 2008 was down by almost a third from 2004.

When camcording began to decrease in the United States, we noticed increased activity elsewhere, particularly in Canada. Between 2005 and 2006, Canadian-source camcorded copies rose by 24 percent. After consultations with the Canadian Government, including cooperative engagement between the United States and Canadian Governments, Canada enacted its own camcording law in 2007.

Since then, we have seen Canadian-source camcorded copies fall by nearly half.

As might be expected, effective legislation and enforcement is starting to push this activity elsewhere. Countries without effective camcording legislation, such as Ukraine, the Philippines, Thailand and Mexico, have become havens for illegal camcording operations. There is an urgent need for action and an effective international response.

The camcording provisions in the recent South Korea and Malaysia FTAs should be a model for future FTAs. Similarly, the United States Government should make effective legal protections a priority in bilateral discussions and in Special 301 determinations.

This is an area where we know we can make a difference. But it will take joint efforts of industry and government on an international scale to make it work. There are other manifestations of technological development enabling widespread infringing distribution that demand attention if piracy is going to be meaningfully addressed. A case in point is Internet piracy on user-generated content, or UGC sites.

In just a few short years, we have seen unprecedented growth in UGC sites and services. Rather than resort to litigation or legislation, as our first response to the rampant piracy on these sites, we engaged a number of sites directly in an effort to find a solution.

The result was a set of Principles for User-Generated Content Services that reflect a shared commitment to eliminating infringement on these sites, including through the use of state-of-the-art filtering technology, while also protecting fair use and promotion of original and authorized user-generated content. Those principles

have now been joined by 12 companies in the United States and in Europe, and as a result, we have seen a substantial reduction in piracy on participating UGC sites.

But similar to the camcording experience, infringing activity is moving from those sites that are implementing effective filtering technologies to those that do not.

Unsurprisingly, many of those sites are located overseas. So as with camcording, a meaningful solution was must an international one. As we engage with UGC sites, both domestically and around the world, we continue to advocate a constructive solution along the lines of the one embodied in the UGC principles. We would strongly encourage the United States Government to do what it can to promote similarly effective interindustry solutions, here, and in its interactions abroad.

Finally, I want to take note that while our problems with piracy and counterfeiting abroad remain significant, we continue to have very serious threats right here at home.

The fact is the United States studios lose more revenue to piracy occurring over broadband networks in this country than they do to piracy in countries abroad, like China, Russia and Thailand, where piracy rates run between 75 and 90 percent. This is an area, Mr. Chairman, to which you have devoted substantial thought, and to which we must continue to devote our energy and attention.

I look forward to working constructively with you and other members of the committee as we seek meaningful solutions to these complex problems. Thank you.

[The prepared statement of Mr. Cook follows:]

**Testimony of
Richard Cook
Chairman
The Walt Disney Studios**

**Before the Committee on Foreign Affairs
U.S. House of Representatives
Van Nuys, California
April 6, 2009**

Mr. Chairman, thank you for convening this hearing today and inviting me to participate.

No issue is more important to The Walt Disney Studios than the protection of intellectual property. Intellectual property – products of the imagination brought to life in stories told and captured on film – is the core of our business. The ability to protect that intellectual property is what drives our ability to continue investing in new creativity, to tell new stories and to innovate in new ways to speak to the imagination of those who view our films. It is what allows more than 1.3 million U.S. workers to come to work each day and apply their skills and creativity in the American film and television production industry. Yet as Jack Valenti was known to say, “If you can’t protect what you own, you don’t own anything.” This is a sobering reality, and I commend you, Mr. Chairman, for focusing the attention of the Foreign Affairs Committee on how to ensure that intellectual property remains protected in an increasingly complex global environment.

These are challenging times for the entertainment industry, both in terms of the impact of the global economy and the fundamental changes occurring in the ways in which consumers interact with and consume entertainment media. Movie studios, like other companies, have had to make difficult choices in the face of tough economic conditions. Yet the motion picture industry maintains its great promise as a truly unique American industry with a strong history of creating quality, high-paying jobs and economic benefits throughout the United States. A single motion picture production will employ hundreds of people and contribute hundreds of thousands of dollars per day to the local economy. Overall the industry generates some \$30 billion in wages each year for more than a million U.S. workers. And we maintain a positive balance of trade around the world, with an annual trade surplus in excess of \$9 billion. Now, more than ever, we should be encouraging policies that promote investment in this kind of creativity. As our Founding Fathers recognized, the most effective of all such policies is the encouragement of authorship and innovation through the protection of intellectual property.

Beyond changes in the economy, digital technologies have changed the way consumers view and interact with our products. Disney has been a leader in meeting these challenges, being mindful of change and mindful of the price-to-value relationships that we offer. We have taken the view that the best way to meet these challenges, is to make our products readily available through legitimate means on a well-timed, well-priced basis. And we are doing that. We were the first studio to offer full-length feature films

for downloads on iTunes. We were the first studio to offer online movie rentals “day and date” with the DVD release. And we continue to innovate new ways to provide consumers access to our products, when and where they want.

Just as digital technologies have changed consumers’ media consumption habits, digital technologies have also changed the nature of the challenges we face from piracy. Gone are the days when borders provided a significant barrier to trafficking in pirated goods. In fact, gone are the days when pirated goods necessarily take the form of physical goods at all. No longer do we live in a world where piracy and counterfeiting activities are confined to a small number of sophisticated and large-scale syndicates, though those certainly continue to exist. Today the actions of a single individual with consumer grade tools can feed an entire chain of physical and Internet piracy. And most importantly, what happens in one country now has a profound impact on businesses in other countries.

On the positive side, many countries are coming to recognize that providing meaningful legal protections for intellectual property and the effective enforcement of those laws fosters an environment in which authorship and innovation are encouraged. With that sort of environment comes trust among trading partners and prosperity. The principles that underlie the value of protecting creative output and the benefits that flow from them are universally applicable. Just as the protection of intellectual property has served as an engine of economic growth and prosperity in the United States, the same principles offer incentives for growth in creativity, innovation, and economic prosperity in countries around the world. This reality should create an atmosphere of shared objectives and cooperation in our relations with our trading partners. Significant achievements have resulted through bilateral and multi-lateral discussions in the recent past. But more can and must be done to meet these new challenges.

Let me share with you an example that will demonstrate the complexity and the international scope of the piracy challenges we face. Last year we released a wonderful Disney-Pixar film named Wall-E, which won the Academy Award for Best Animated Film. The film was released in theaters in the United States on June 27. It was released in the Ukraine a week later on July 3. On July 5, a copy of the movie made by an individual operating a camcorder in a theater appeared on a Russian Internet site. Using commonly applied forensics we were able to trace that camcorder copy to a theater in Kiev, Ukraine. Two days later, on July 7, copies of the same camcorder version appeared for the first time on an Internet peer-to-peer site. Within seven days of the first copy appearing on the Internet, copies of the same camcorder version were uploaded on thirteen other Internet sites. Within ten days of the film’s Ukrainian theatrical release there were copies online in five different languages (including Russian, English, Spanish, Dutch and Mandarin). Within 30 days there were copies in 10 different languages.

The reach of this single Ukrainian camcord was not limited to Internet distribution. The same camcorder copy served as the “master” for physical copies worldwide. The first “hard good” copy of the camcorder version was found on July 6 in Kiev, and a second copy was purchased in Chicago on July 7, only two days after it first appeared on the Internet. Subsequent copies of the same version were purchased in Lima, Peru on July 8,

and in Guadalajara, Mexico and New York City on July 15. By July 31, just 28 days after theatrical release in Ukraine, "hard good" copies of this same version were purchased in Argentina, Indonesia, Philippines, UK, China, Canada, Turkey, Hungary, Japan, Russia, Chile, Australia and Brazil. In total, 54 "hard good" purchases were made in cities around the world all sourced from the same camcorded version of the film.

The problem of camcording is a major concern to Disney and to the motion picture industry generally. With the increased availability of high-definition camcorders at ever-decreasing prices, a camcorded copy of a movie can be near-DVD quality, with perfect audio recorded from sound jacks intended for use by hearing-impaired theater patrons. Typically camcording is conducted by organized criminal groups, or in some cases criminal-minded individuals, who then sell their illicit copies to other groups in a chain that leads to these copies making their way to the streets and to the Internet. Today, worldwide more than 90 percent of counterfeit recently released movies on DVDs can be sourced to illegal camcording.

But camcording is a good example of where the combined efforts of industry and government can make a difference. In 2003, Mr. Chairman, you joined with then Chairman Smith in the House, and Senators Feinstein and Cornyn in the Senate, to introduce legislation to address the serious problem of illegal camcording in that United States. That legislation made it a federal crime, punishable by jail time and fines, to use an audiovisual recording device to transmit or make a copy of a copyrighted motion picture from a performance in a motion picture exhibition facility. That bill was enacted into law, as you know, as part of the Family and Education Copyright Act of 2005. This federal bill operates alongside anti-camcording laws in a majority of states.

The impact of this kind of legislation on the camcording problem in the United States has been dramatic. New York has been one of the centers of illegal camcording activity. In 2004, there were 113 camcorded copies of films traced to theaters in New York. In 2008, there were 9. In all 50 states put together, the number of camcorded copies traced to domestic theaters was down by almost a third from the number in 2004. The effectiveness of these laws has been amplified by a commitment on the part of law enforcement to enforce them. For example, last year an active camcorder in the Washington D.C. area was sentenced to 21 months in prison in connection with a guilty plea to two counts of violating the federal anti-camcording law. This is not to suggest that camcording does not remain a problem in the United States. But certainly the actions by Congress and by law enforcement, coupled with increased security measures taken by the studios, have made a measurable impact on this problem in the United States.

This is by no means the end of the story, however. Camcording is very much an international problem. When we began to see camcording activity decrease in the United States we noticed that such activity was increasing elsewhere, particularly in Canada. Lack of an effective Canadian legal framework to deal with this problem led to Canada becoming a major source of illegal camcording. In fact, between 2005 and 2006 Canadian-source camcorded copies rose by some 24 percent. After consultations with the Canadian government, including cooperative engagement between the U.S. and

Canadian governments, Canada enacted its own legislation to address the camcording problem in 2007. Since then there have been several arrests made and just this year an individual from Montreal was convicted under the new camcording law. Early returns show some promise, with identified Canadian source camcorded copies falling from 115 in 2007 to 66 last year.

As might be expected, however, effective legislation and enforcement is starting to push this activity elsewhere. Countries without effective camcording legislation, such as Ukraine, the Philippines, Thailand, and Mexico have increasingly become havens for illegal camcording operations. The increase in illegal activity in these countries has been dramatic and there is an urgent need for action.

But for there to be an effective solution to this problem, there must be effective international response. The U.S. Government has succeeded in securing commitments in this area in recent free trade agreements with South Korea and Malaysia. I would strongly encourage these provisions to be looked to as model provisions in future FTAs. Similarly, the U.S. Government should make effective legal protections against illegal camcording a priority in bilateral and multilateral discussions and in Special 301 determinations. This is an area where we know we can make a difference. But it will take joint efforts of industry and government on an international scale to make it work.

There are other manifestations of technological development that enable widespread and incredibly swift distribution of content that demand attention if piracy is going to be addressed in a meaningful way. While in some cases government action may prove necessary, there is some hope that in at least some areas inter-industry cooperation can produce results. A case in point is Internet piracy on user generated content (UGC) sites.

In just a few short years we have seen an unprecedented growth in UGC sites and services. And while these sites offered the potential for the distribution of creative and truly original content, they quickly became a preferred and easy means of distribution of and access to infringing film and television content. We decided that rather than resort to litigation or legislation as our first response, we would try to engage a number of these sites directly in an effort to find a mutually agreeable solution to the rampant piracy occurring on these sites. What came out of those discussions was a set of Principles for User Generated Content Services agreed to by a number of major content providers and UGC services. At the heart of these principles is a shared commitment to the goal of eliminating infringement on these sites, including through the use of state-of-the-art filtering technology, while also protecting fair use and the promotion of original and authorized user-generated content. Those principles have now been joined by twelve companies in the U.S. and in Europe, and the result has been a substantial reduction in piracy on participating UGC sites.

But as with the camcording problem, the problem of infringement on UGC sites is an international one. Infringing activity has moved from those sites that are implementing effective filtering technologies to those that do not. And unsurprisingly, many of those sites are located overseas. So as with camcording, a meaningful long-term solution must

be an international one. As we engage with UGC sites both domestically and around the world, we continue to advocate a constructive solution along the lines of the one embodied in the UGC Principles. We would strongly encourage the U.S. Government to promote similarly effective inter-industry solutions here and in its interactions abroad.

Mr. Chairman, it is clear that the problems facing us are complex and far reaching. While too often borders remain impediments to legitimate trade, they are increasingly irrelevant to illicit trade. A single infringing copy of a movie sourced in one country and placed on the Internet will be translated into mass distribution of counterfeit DVDs in markets across the world within hours. The anonymity afforded by the Internet, coupled with the ability to evade detection through the use of mail to traffic in small quantities of counterfeit product delivered direct to consumers or wholesalers, render this model exceedingly low-risk for counterfeiters. And when it comes to Internet piracy, few if any borders remain. As readily available online sources of pirated goods combines with escalating broadband capacity in some markets, as we are seeing in Korea, the problem of Internet piracy can become so pervasive as to eliminate entire legitimate markets. We need creative and effective solutions, and any truly effective solutions must be international ones.

I also want to note that while our problems with piracy and counterfeiting abroad remain significant, we continue to face very serious threats right here at home. The fact remains that U.S. studios lose more revenue to piracy occurring over broadband networks in this country than they do to piracy in countries abroad, like China, Russia and Thailand, where piracy rates run between 75 and 90 percent. This is an area, Mr. Chairman, to which you have devoted substantial attention, for which you deserve a great amount of credit, and to which we must continue to devote our energy and attention. I thank you for your thoughtfulness in this area and look forward to working with you in a constructive effort to find solutions to these very serious issues both at home and abroad.

Thank you again for inviting me to appear before you today.

Chairman BERMAN. Thank you, Mr. Cook.
And Mr. Miller.

STATEMENT OF MR. MICHAEL F. MILLER, JR., INTERNATIONAL VICE PRESIDENT, THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES (IATSE)

Mr. MILLER. Good morning. Thank you for the opportunity to set forth the impact of piracy on IATSE members. The IATSE was founded in 1893 by a group of stagehands in New York City, and has expanded during our 116-year history with local unions chartered throughout the United States and Canada.

Today, the IATSE is the largest entertainment union in the world with nearly 120,000 members. For our members, the issues of combating piracy and protecting intellectual property are of paramount concern. There are hundreds of thousands of individuals employed in the entertainment industry. Most are hard-working people who do not earn the millions of dollars that a few high-profile actors do, but work in middle class jobs for middle class wages and middle class benefits.

Besides the actors and actresses, the number of individuals employed on the production of any given motion picture may be anywhere from 200 to a 1000 employees. They are not in front of the camera but supply the necessary labor to make those movies.

The wages we negotiate for our talented and skilled members are higher than the minimum hourly wage, but it must be remembered that often our members have to make their paychecks last much longer, because these are not permanent jobs, they are jobs that will end when production is complete, and the next job they get may not be for many months.

Because of the nature of our business, we have attempted to ensure that our members and their families are taken care of by securing additional benefits to be provided for them in the form of residual payments. When studios release DVDs to the market, our members share in those sales with these residuals. In the IATSE, those payments are contributing to the health and retirement benefits that our members so desperately need.

When pirated copies are selling on the streets, are being illegally downloaded from the Internet, our members and many more workers see nothing. Piracy is costing these individuals an estimated \$100 million in pension and health care benefits, annually.

Piracy is stealing, pure and simple. Anyone who sells, acquires or copies these materials, without permission, is simply a thief. Downloading a movie without paying for it is no different than stealing a DVD off the shelf of a store.

Making movies available on the Internet for downloading, selling pirated DVDs on the street, or camcording and redistributing movies, broadcasts or performances, are all forms of piracy.

Unfortunately for our members, much of the public still perceives the illegal pirating of motion pictures as a victimless crime. But piracy is not a petty and victimless crime. Piracy is a devastating economic attack that in 2005, alone, cost our industry \$6 billion, and as large as that sum is, it is only a fraction of the \$250 billion that copyright piracy costs the overall U.S. economy every year.

In fact, in 2005, piracy cost the movie industry more than 141,000 jobs and \$4.5 billion in annual lost wages, while depriving State and local governments of \$837 million in tax revenue, money that could have gone toward roads, schools, or infrastructure to help further shore up American communities.

Downloading movies and music without the authorization of copyright holders is a growing international problem, and we need to take action. Recently, the international community has started to get involved, and China, Russia and the European Union have drafted legislation to implement or increase criminal penalties for counterfeiting and intellectual property piracy. But that is not enough.

Other international law enforcement agencies have recognized that piracy is a serious crime, and are beginning to step up their efforts to prevent, or maybe reduce it. Mexico has begun to step up its fight against piracy by creating new advertising aimed at children, and statements by officials that denounce piracy as an illegal activity that supports more sinister aspects of organized crime.

The IATSE consists of members in both the United States and Canada, and our Canadian brothers and sisters are seeking relief from the Canadian Government in the form of anti-piracy legislation as well. Canadian movie theaters account for nearly 50 percent of all camcorderd sources worldwide, and Canada's film industry is taking steps to attempt to address that.

Amendments to Canada's criminal code were passed in 2006, which made individuals videotaping a movie for purposes of resale punishable by up to 5 years in prison.

In addition, there is currently an initiative led by the Canadian Motion Picture Distributors Association, and other industry stakeholders, to support amendments to the Copyright Act in Canada. They have not yet been successful.

What can we do? Well, first, just as society punishes bank robbers, the society should punish those pirates who rob us of our intellectual property. Sadly, the U.S. Government has not been in the forefront of this movement. In 2008, there were only 11 Federal cases brought, and of those, five defendants pled guilty and one defendant was actually tried and found guilty. We can hope that the States are also enforcing these laws more rigorously.

Secondly, we seek to support the sponsorship of stronger legislation protecting intellectual property. On the Federal level, we now have the PRO-IP Act of 2008 which increases penalties for violating U.S. copyright and trademark laws, and creates a Cabinet-level IP Czar to advise the President and coordinate Federal programs and policy designed to combat piracy.

Finally, we would like to reach out to the studios and employers of our members to work together to find new ways of encouraging legal downloading of movies and content.

If the audience for movies can be reached with quick, legal, high-quality downloads, this would produce an economic benefit, almost immediately.

The entertainment industry is one of the largest exporters of product in the United States and right now is one of the few areas in which our economy thrives. It provides revenue for our Government and employment for a vast number of U.S. citizens. We must

collectively take strong action against this problem as expeditiously as possible.

The movie industry is a significant portion of the economy, accounting for about 1.3 million jobs, over \$30 billion in wages and \$10 billion in Federal and State taxes each year. The loss of more than \$6 billion in any year to piracy is unacceptable.

The majority of the workers hurt by piracy are not the big name actors or wealthy producers, as they make up a very small percentage of the motion picture industry workforce.

The people who are hurt the most are the ones working behind the scenes in middle class jobs on a job-to-job employment.

Motion picture piracy is not something that can be ignored, it is a serious crime, and we, in the IATSE, and about 1 million other hardworking men and women are its victims.

On behalf of the IATSE, I am particularly appreciative of this opportunity to have testimony presented to you and I thank the committee for inviting us to participate. If we can be of any assistance of answer any questions, we remain available. Thank you.

[The prepared statement of IATSE follows:]



STATEMENT OF

Matthew D. Loeb
On Behalf of the

International Alliance of Theatrical Stage Employees,
Moving Picture Technicians, Artists and Allied Crafts
Of the United States and Canada
AFL-CIO, CLC

At the
Los Angeles Field Hearing of the
House Foreign Affairs Committee
Chairman Howard Berman

“International IP Theft”

April 6, 2009
Los Angeles, CA

Chairman Berman and Ranking Member Ileana Roslehtinen:

My name is Matthew D. Loeb and I am the International President of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada, AFL-CIO, CLC. Although I am unable to personally be present to testify before you today, I am grateful that you have permitted me to provide testimony through my designee, Michael F. Miller, Jr. who is an International Vice President of the IATSE. We truly appreciate this opportunity to set forth the plight of IATSE members, members of other unions and guilds in the entertainment industry.

The IATSE was founded in 1893 by a group of stagehands in New York City and has expanded throughout our 116-year history with local unions chartered throughout the United States and Canada. Today, the IATSE is the largest entertainment union in the world with nearly 120,000 members who are employed in legitimate theatre, motion picture exhibition, convention and trade shows, motion picture and television production, radio and television broadcasting and various other crafts of the entertainment industry.

The mission of the IATSE is to provide the finest representation for our members and to protect their best interests. Our union leadership does this by negotiating with employers in a fair and equitable manner. In this way, we obtain the best possible wages and benefits for our members. The benefits we negotiate are critical to the well being of our members,

especially in these very difficult times. Pension benefits are being challenged by the adoption of the Pension Protection Act of 2006, and the health care crisis is extraordinarily challenging.

For our members, the issues of combating Piracy and protecting Intellectual Property are of paramount concern. We stand with the movie and music industries in this arena. There are hundreds of individuals employed in the entertainment industry. These are hard working people who do not earn the millions of dollars in one movie as do many of the high profile actors with whom we are familiar. The relatively few actors who are able to command such wages are able to do so because of the box office receipts they secure.

The glitz and glamour of the motion picture and television industry are the fantasies created on the screen. Besides the famous actors and actresses, the number of individuals employed on the production of a given motion picture may be anywhere from 200 to 1,000 employees. They are not in front of the camera, but supply the absolutely necessary labor to make those movies, and work long, hard hours on a daily basis during the course of a film. The wages we negotiate for our talented and skilled members are higher than the minimum hourly wage. But it must be remembered that often our members have to make their paychecks last much longer because these are not permanent jobs. They are jobs that will end when production is complete and the next job they get may not be for months.

Because of the nature of our business we have attempted to ensure that our members and their families are taken care of by securing additional

revenue to be provided for them in the form of residual payments. In the IATSE those payments are contributed into the health and retirement benefits that our members so desperately need. Piracy is costing these individuals literally hundreds of millions of dollars a year in benefit contributions compounding the challenges we face in providing members health and retirement benefits. When studios release DVD's to the market our members share in the profits of those sales with these residuals. But, when pirated copies are selling on the streets or being illegally downloaded from the Internet, our members and many more workers see nothing.

What is piracy? Piracy is stealing, pure and simple. Anyone who sells, acquires, copies, or distributes copyrighted materials without permission is a thief. Downloading a movie without paying for it is the same as stealing a DVD off the shelf of a store. Making movies available on the Internet for downloading, selling pirated DVDs on the street, or taping (also known as camcording) and redistributing movies, live broadcasts or performances without a license are all forms of motion picture piracy.

Unfortunately, much of the public still perceives the illegal pirating of motion pictures, otherwise known as intellectual property theft, as a victimless crime. But PIRACY IS NOT A PETTY, VICTIMLESS CRIME. Piracy is a devastating economic attack that, in 2005 alone, cost our industry \$6 billion! And, as large as that sum is, it's only a fraction of the \$250 billion that copyright piracy costs the overall U.S. economy every year. In fact, a recent study revealed that in 2005, piracy cost the movie industry more than 141,000 jobs and \$5.5 billion in annual lost wages, while depriving state and local governments of \$837 million in tax revenue. That's money out of OUR POCKETS; money that could have gone toward roads,

schools, and infrastructures to help shore up American communities.

Who does piracy hurt most? Working men and women of our union, who every year experience **roughly \$100 million in lost residuals to their health and pension funds** due to intellectual property thieves intent on copying, acquiring, and distributing copyright materials in an unauthorized manner. While all consumers love something for nothing, the plain fact is that downloading a movie from the Internet without making a payment or without authorization from the copyright holder is no different than walking into a store and stealing a DVD off the shelf.

Downloading movies and music without the authorization of copyright holders is a growing international problem and we need to take action. Recently, the international community has gotten involved, and China, Russia and the European Union have drafted legislation to implement or increase criminal penalties for counterfeiting and intellectual property piracy.

Other international law enforcement agencies have recognized that piracy is a serious CRIME and are beginning to step up their efforts to prevent, or at least reduce it. Mexico has begun to step up its fight against piracy, by new advertising aimed at children and statements by officials denouncing piracy as an illegal activity that supports more sinister aspects of organized crime.

In Malaysia in 2007, the Motion Picture Association (MPA) used specially trained dogs to lead investigators to 1 million pirated DVDs, CDs and optical discs. The dogs were used again that year to sniff out and find a

stash of 150,000 pirated optical discs from video stores in Kuala Lumpur. In March of 2007, Chinese officials seized 1.64 million illegal DVDs in southern China.

The IATSE consists of members in both the United States and Canada and our Canadian brothers and sisters are seeking relief from the Canadian government in the form of anti-piracy legislation as well. Canadian movie theaters account for nearly 50 percent of all camcorder sources worldwide, and Canada's film industry has come out swinging. Amendments to Canada's Criminal Code were passed by the House of Commons in the 1st Session, 39th Parliament in 2006, which made individuals videotaping a movie, without the consent of the theater manager, subject to 2 years in prison; videotaping, without the consent of the theater manager, for the purpose of sale, distribution, or commercial transaction, now lands pirates 5 years in prison.

In addition, there is currently an initiative led by the Canadian Motion Picture Distributors Association (CMPDA – the counterpart to the MPAA in the U.S.) and other industry stakeholders to support amendments to the Copyright Act in Canada. A recent Bill did not make it through the 39th Parliament, but the Canadian government has said it will try again. The proposed legislation is similar to the U.S. Digital Millennium Copyright Act (DMCA); it would go a long way to tightening up copyright protection and allow Canada to meet its obligations under the World Intellectual Property Organization (WIPO) treaties.

A new report just released by the RAND Corporation, with funding provided by the MPA, shows a clear link between funding for organized

crime and movie piracy. There are not only economic reasons for stronger enforcement of IP laws, but public safety and national security reasons as well.

Many city, state and federal agencies here in the United States are aggressively targeting American-based piracy. New York City recently signed into law a Bill that upped the ante against pirates videotaping movies in theaters in their five boroughs. What was once a \$250 fine and 15-day jail sentence in New York City now means six months in jail and fines up to \$5,000. More recently, legislation was passed on New York's State level that criminalizes piracy with penalties for felony. Underscoring the anti-piracy movement is the fact that legislation has been enacted in 38 states, making camcording illegal.

Our industry, which accounts for 1.3 million jobs and \$10 billion in federal and state taxes per year, cannot find itself commanding any less attention than a Wal-Mart or a General Motors. The entertainment industry is no corner candy store, and motion picture pirates are not a scruffy gang of teenagers looking for kicks. PIRACY has become a highly evolved, criminal enterprise that is robbing billions from our industry. It is the THEFT of someone else's PROPERTY, and robs from those who work the hardest in the industry: IATSE craftspeople. Be aware and be informed. Protecting the motion industry benefits everyone.

What can we do?

First, we need to educate our families, our friends, and ourselves. We need to stop the theft we know about. We need to recognize piracy and who

it actually hurts and inform those around us about the facts. Just as this society punishes bank robbers, this society should punish, with just as much force, those pirates who rob us of our intellectual property. Sadly, the US government has not been in the forefront of this movement. In Fiscal 2008, there were only 11 federal cases brought for “trafficking in counterfeit labels for copies of motion pictures...”, and of these 5 defendants pleaded guilty and 1 defendant was tried and found guilty. We can only hope that the states are enforcing their laws more rigorously.

Second, we seek support the sponsorship of stronger legislation protecting intellectual property. On the federal level we now have the “Prioritizing Resources and Organization for Intellectual Property Act of 2008” (PRO-IPA). This Act increases penalties for violating US copyright and trademark laws, and creates a Cabinet level “IP Czar” to advise the President and coordinate federal programs and policy designed to combat IP piracy. What is important now is that President Obama appoint someone to that post so that proper focus may be given this issue by a responsible and accountable member of his administration.

We will continue to work with federal, state and local elected leaders to strengthen existing laws and enact new laws that protect us. After all, the movie industry is a significant portion of the economy: it accounts for about 1.3 million jobs, pays \$30.24 billion in wages, and pays \$10 billion in federal and state taxes a year. We all benefit from a thriving movie industry. The loss of more than \$6 billion in one year to piracy is totally unacceptable.

Six billion dollars in one year is an outrageous amount to have stolen from the pockets of the hard working employees who toil every day to make

stories come alive on the big-screen. You see, the majority of the workers hurt by piracy are not the big-name actors or the wealthy producers—they make up only a small percentage of the motion picture workforce. The people who are hurt the most are the ones working behind-the-scenes: us—each and every one of our members.

Finally, we want to reach out to the movie studios and employers of our members to work together to find new ways of encouraging LEGAL downloading of movies and content. We have to realize that technology is here to stay. The Recording Industry has finally given a model that MAY be worth following – encouraging LEGAL ways to acquire music. If the audience for movies, which is undoubtedly enormous, can be reached with quick, legal, high quality downloads, this would produce an economic benefit immediately. Remember how fearful we were about VHS and DVDs? Legal DVDs now account for a large amount of the profit any given movie may make. While legal downloads may not bring in as much profit, anything is better than the huge losses we face through piracy.

The entertainment industry is the largest exporter of product of the United States and right now, is one of the few areas in which our economy thrives. It provides revenue for our government and employment for a vast number of U.S. citizens. We must collectively take strong action against this problem as expeditiously as possible.

Motion picture piracy is not something we can ignore. Piracy is a serious crime. We in the IATSE, our union brothers and sisters, and about a million hard working men and women, are its victims.

On behalf of the IATSE, I am particularly appreciative of this opportunity to have testimony presented to you and I thank this Committee for inviting us to participate in your hearing and provide information we feel is important for you to know and consider when legislation is to be formulated, proposed and acted upon.

If the IATSE can be of any further assistance to this and other committees regarding this issue, we stand ready, willing and able to do whatever we can to protect our members and workers across this nation.

Thank you.

Chairman BERMAN. Thank you very much, Mr. Miller.
And now Zach Horowitz, we look forward to hearing.

Mr. HOROWITZ. Mr. Chairman—

Chairman BERMAN. Oh. Let me interrupt you for 1 second. Two announcements. This is no longer Florida and Southern California. We have been joined, I am very happy to say, by our colleague from Houston, Texas, Ms. Sheila Jackson Lee, a member of the committee, and interested in these issues.

And I also want to particularly acknowledge the presence of two distinguished representatives from the Consul-General of France, David Martinon, and the executive director of the Film and TV Department. Notice, in France, the Consul-General has a position, executive director of the Film and TV Department. Maybe some of our embassies and consulates should have someone like that. But Laurent Morlet, we are very happy to have both of you with us today.

Mr. Horowitz.

STATEMENT OF MR. ZACH HOROWITZ, PRESIDENT AND CHIEF OPERATING OFFICER, UNIVERSAL MUSIC GROUP

Mr. HOROWITZ. Mr. Chairman, let me begin by thanking you for the many hours, over many decades, you have dedicated to America's creative community. Effective copyright laws give us the confidence to look for the next new sound; but we need your help.

One in 3 CDs sold globally are made by pirates, and only 1 in 20 downloads is legitimate. We estimate that there were over 40 billion illegal downloads in 2008. That is an online piracy rate of 95 percent.

And when it comes to physical piracy, 90 percent of recorded music sales, in places like China and Russia, are counterfeit. Even in many EU countries, the piracy rate is over 50 percent. These bleak statistics have a real cost.

Our domestic music industry loses over \$5 billion annually in global piracy, and because U.S. music is the most popular genre around the globe, piracy disproportionately affects U.S. artists and the U.S. economy. It means lost jobs and lost tax revenues.

If we can't secure a return on our investments, we cannot invest in developing artists. How many great artists will go undiscovered? Will piracy cheat us out of the next Beethoven or the next Beatles? We will never know. And as manufacturing jobs disappear, intellectual property is how our kids will earn their livelihoods. The stakes are incredibly high, but IP has not been the national priority that it needs to be.

While we appreciate the complexities of trying to protect intellectual property in a world with different legal regimes and cultures, every country should be expected to abide by basic principles of fairness and the rule of law.

You can be a powerful force in sending that message. Allofmp3.com, which has been mentioned by some of you today, was a Russian company and it provides a perfect illustration of how the U.S. Government can make a difference.

Allofmp3 was an online service that sold all the most popular music of the world, without any authorization from artists or rights holders. Users were charged a few cents per song, which gave the

site a patina of legitimacy, and the purchases were redeemed through MasterCard or Visa. No money was ever paid out to artists or rights holders.

By 2006, it was one of the world's most popular music sites. When the music industry brought the site to the attention of Congress, Members like you made the rogue operation the focal point of dialogues on global piracy.

When Russian officials wanted to discuss membership in the WTO, the U.S. Government used allofmp3.com as an example of why Russia was not ready to join the global alliance.

Over time, the spotlight led to action by the Russian Government. One of the world's most notorious illegal music sites was reined in because U.S. officials brought attention to its indefensible business model.

The success in handling allofmp3.com demonstrates that legislation is not the only tool in Congress's arsenal, and that traditional law enforcement is not the administration's only leverage. We could use that kind of spotlight on Baidu, China's number one online search engine. Baidu purposely provides links to unauthorized music sites and is responsible for 50 percent of the Internet-based piracy in China.

Google recently launched a fully-authorized online music service in China to compete with Baidu. It will be free to users and content creators will share in ad revenue generated by the site. But can Google China overcome Baidu's first mover advantage, or the competitive disadvantage of compensating artists and rights holders when Baidu does not?

Our piracy problems are not limited to far-away places like Russia and China. Regrettably, as has been mentioned, our closest neighbors present some of our worst piracy challenges. The OECD estimates that Canada has the highest level of online piracy in the world. Amazingly, Canada still has not modernized its copyright law for the digital age, and is now a haven for those running unauthorized music Web sites.

And in Mexico, piracy has reached epidemic proportions. Seven out of 10 CDs sold are pirated. We hope this committee will call out Canada for its utter disregard for the policies at the heart of copyright, and its indifference to the realities of the borderless digital marketplace, and we urge the committee to add its voice to those calling on Mexico's leaders for sustained and consistent anti-piracy enforcement initiatives.

Another area where this committee can make a difference is with the USTR's Special 301 list. It would be productive for the committee to meet with the ambassadors from the most problematic countries, so that you can make clear that lax IP enforcement is unacceptable. They need to be left with a real sense that there are meaningful repercussions for our trading partners, if they don't resolve the 301 issues that place them on the list.

This would be especially valuable for Mexico and Canada to do.

Mr. Chairman, we are in a technology revolution where we have the real opportunity to bring music to fans everywhere, when they want, where they want, and how they want, in legitimate ways never dreamed of before.

However, unless we are vigilant, unless there is basic protection for the work of those who labor so hard to create the magic that is music, the opportunities afforded by breakthroughs in technology will be lost.

This will be a tragedy for musicians and fans, for the global economy, and for our culture. We hope that the committee and Congress can send this powerful message to the world.

Thank you for your interest and for your continuing efforts on behalf of creators.

[The prepared statement of Mr. Horowitz follows:

Statement of Zach Horowitz
President and Chief Operating Officer
Universal Music Group
Before the House Foreign Affairs Committee
Monday, April 6, 2009

My name is Zach Horowitz and I am President and Chief Operating Officer of the Universal Music Group – the world's leading recorded music company with wholly owned operations or licensees in 77 countries. Our company is also home to the industry's leading global music publishing group. In the interest of time, I will submit for the record a statement by the Recording Industry Association of America that details some of the music industry's most pressing international piracy problems.

Mr. Chairman, let me begin by thanking you for the many hours, over many decades, you have dedicated to America's creative community. Effective copyright laws give us the confidence to make investments in creativity – to look for the next new sound, to cultivate an aspiring artist, and to introduce music enthusiasts around the globe to talents like Rihanna, Amy Winehouse, Lady Gaga, Duffy, Colbie Caillat, and M I A. Just a few years ago you may not have known any of those names but now they join Gwen Stefani, U2, Stevie Wonder, Will I Am, Kanye West, Mary J Blige and so many other Universal artists who entertain the world.

Simply put, we need your help. One in three CDs sold globally are pirate, and only one in 20 downloads is legitimate. Those facts translate into lost jobs, lost tax revenues, and for artists, lost dreams. It affects everyone from musicians and songwriters, to recording studio engineers, to music retailers, to album cover designers, to truckers who carry CDs to retailers. It is not just the southern California economy, and not just the music and movie businesses. Today, institutionalized, commercial ventures are pirating products from all across our economy.

I fear that the bleak piracy statistics have become so familiar that many have become inured to what they mean. But they are staggering and provide context as to why this hearing is essential. IFPI – the music industry's international trade group - estimates there were over 40 billion illegal downloads in 2008, based on separate studies in 16 countries. That means that there is an online piracy rate of 95%.

And when it comes to physical piracy, counterfeit records constitute approximately 90% of all recorded music sales in places like China and Russia. Physical piracy rates in many European Union countries are over 50%. But one does not have to go that far to confront rampant piracy. Our closest neighbors are challenged by some of the worst problems anywhere.

The Organization for Economic Cooperation and Development – OECD – has estimated that Canada has the highest level of online piracy in the world. Amazingly, Canada still has not modernized its copyright law for the digital age and is now a haven for those running unauthorized music websites. The fact that Canada ratified the WIPO treaties but did not update its laws to meet its requirements means there is no recourse against online theft – a fact known by thieves everywhere.

On the physical side, Canadian customs officials are hamstrung because they do not have the power to act without a court order. They have no authority to seize counterfeit goods or even INFORM rights holders when they discover suspicious merchandise. So when a container comes into their ports, they open it, see DVDs, CDs and video games – or sneakers for that matter – and close it back up and pass it through. Much of the time the goods are transshipped to – you guessed it – the United States. I would hope that Members of this Committee would raise these deficiencies with the Canadian officials that you meet with. Ask them to explain their reputation as a nation unfriendly to the policies at the heart of copyright – and the realities of the borderless digital marketplace.

In Mexico, seven out of ten CDs sold are pirated. Just last week there was a raid in Tepito – Mexico's piracy capital – where more than 300 enforcement officers took part in the raid of six labs and 18 warehouses. They seized five million music and movie covers, 160 thousand recorded CDRs and DVDRs with music and movies and 220 burners.

Earlier in the month the Mexican military conducted a raid in Veracruz that resulted in the seizure of 1,800 burners and approximately 700 thousand recorded CDRs and DVDRs with music and movies. It has been reported that the raid caused an organized crime group called "Los Zetas" to make threats against the anti-piracy team and that drug cartels may have diversified into piracy. Piracy remains an epidemic in Mexico. If there is further deterioration it might not make sense for companies to invest in local artists, or to stay active in the Mexican recorded music business.

We urge the Committee to add its voice to those calling for more consistent enforcement initiatives – especially as the presence of organized crime heightens the broader challenge to Mexico's law enforcement problems. To fight the piracy epidemic we need a constant, concerted effort from Mexico's leading officials.

Global piracy imposes real costs to the U.S.: According to the Institute for Policy Innovation, the U.S. sound recording industry suffers direct losses of \$5.3 billion annually as a result of global music piracy. While the U.S. represents approximately one-third of the world's music sales, U.S. originated music is the most popular genre sold around the world. As a result, piracy outside the U.S. disproportionately affects U.S. artists and the U.S. economy.

Global piracy imposes cultural costs – If we can't get a return on our investments we cannot invest in new and developing artists, or market established ones. Since 2000 – when internet piracy exploded into our lives – industry gross revenues at retail have fallen over 27% – from \$14.3 billion to \$10.4 billion. As a result, record labels big and small have cut back on their artist roster and have made significant cuts to the number of new artists that are signed to recording contracts.

Global piracy imposes a cost on our economic future While the phrase "intellectual property" is unwieldy, even amorphous, it is at its core creativity, innovation and ingenuity. America is driven by ideas – it is what defines us as a nation. As manufacturing jobs disappear, intellectual property is how our kids will earn their livelihoods. The stakes are so high yet, for whatever reason, intellectual property protection has not been the national priority that it needs to be.

We appreciate the complexities of trying to protect U.S. intellectual property in a world with different legal regimes and cultures. But every country should be expected to abide by basic principles of fairness and the rule of law. And the U.S. can be a powerful force in sending that message.

Allofmp3.com, a Russian company, provides a perfect illustration. It was an online service that sold the best music in the world – catalog and new releases – without the authorization of the artists or rights holders. Users were charged a few cents per track through their Mastercard or Visa – which gave the site a patina of legitimacy – but none of the monies were paid out to artists, songwriters or other rights holders. The proceeds were kept by the Russian "entrepreneurs" who took advantage of an antiquated and vague law, and an unpredictable legal system. By 2006, it was selling music to anyone in the world with a PC and a credit card. In fact, in the UK it had become second to iTunes for download sales among all online buyers.

When the music industry brought the site to the attention of Congress, concerned Members like you made the rogue operation the focal point in dialogs on global piracy. When Russian officials and policymakers wanted to discuss their country's entry into the World Trade Organization, Administration officials including USTR's Ambassador Schwab, Secretary of State Rice and Commerce Secretary Gutierrez used allofmp3 as an illustration of why Russia was not ready to join the global alliance.

Over time, the spotlight led to action by the Russian government. Of course, smaller copycats have sprung up to take the place of allofmp3 and problems persist. But what was then one of the world's most notorious illegal music sites was reined in because U.S. officials brought attention to its indefensible business model.

We could use that kind of spotlight and attention on a number of businesses – including in China where we confront online services such as Baidu. Baidu is a search engine that provides links to unauthorized MP3 music files through its proprietary, dedicated music service. Once again, Baidu does not have the authority to let users search for and listen to song files free of charge. But the music links helped Baidu become China's biggest search engine. Baidu is responsible for 50% of the internet-based piracy in China, and has taken the place of allofmp3 as the leading symbol of a business that makes a profit through the unauthorized use of copyrighted music.

You may have read a recent announcement from Google about an online music service in China that will be free to users. Universal and other music companies licensed our catalog to Google, and will be paid through advertising. If it works, it could be a model for markets everywhere. But can it compete with a service that doesn't compensate the artists and rights holders? Can Google overcome Baidu's "first mover" advantage coupled with the fact that it does not compensate creators?

Baidu demands the kind of scrutiny and attention that was brought to bear on allofmp3 – a case that demonstrated that legislation is not the only tool in the congressional arsenal, and that traditional law enforcement is not the only leverage point for the Administration.

And, by the way, the influences of intellectual property protection don't only flow out from the United States. We, too, can learn from and benefit from the ideas of our international trading partners.

The primary example right now is the way other nations are exploring mechanisms by which Internet Service Providers (ISPs) can be involved in the fight against the copyright theft that flows through their networks. All over the world, governments are looking at ways to confront users who take music, movies, games and software without the copyright owner's authorization. Governments are bringing parties together and brokering agreements between ISPs and content providers. Their goal is to combat piracy in a way that is fair to rights holders and fair to consumers.

The RIAA submission catalogs the different approaches being considered by our trading partners – in countries like France, Ireland, the UK and New Zealand. The discussions and agreements will provide American-based ISPs, rights holders and consumer groups with insights and models that will inform the private conversations that are going on here.

We welcome the ideas. We applaud the efforts.

USTR will soon release its annual Special 301 list. We believe it would be productive for you to convene private meetings in Washington with the Ambassadors from the most problematic countries. Private meetings may be the right forum to make it clear that lax IP enforcement is untenable, and to identify ways the U.S. Government can work with our trading partners to resolve the issues that USTR has identified. It would be especially valuable for you to hear what your colleagues from Mexico and Canada have to say about the current situation.

I know that in some U.S. embassies there are special IP attachés with a portfolio that is part law enforcement, part IP education and part diplomacy. I understand that the Congress may authorize even more IP attachés. I urge you to talk with those officials who are currently fulfilling that role to ascertain what is working, what isn't, and what additional tools and authority they need. We would welcome the chance to work with you on a law that increases our capacity to enforce the IP laws of jurisdiction outside the U.S.

Mr. Chairman, we are in the midst of a revolution – a revolution in technology. With the advent of new communication technologies, EVERY creator, whether it is a musician in Ireland, an actor in India, a poet in Africa, or a teenager in a garage in Van Nuys, can find a global audience.

The fact that most internet "commerce" in copyrighted materials is infringing will stymie the coincidental revolution in global economics. And as the traditional economies of agriculture and manufacturing become increasingly automated, it will be the products of the mind that will define the future for all of us – including aspiring creators who live in countries where IP protection is not a priority. While we are home to a great many creators, gifted individuals exist in every culture and country and strong IP enforcement will allow them to earn a livelihood from the artistic and innovative gifts that they possess.

We hope that this Committee, and the Congress, can send this powerful message to the world.

You have already done amazing work in defense of intellectual property. But as is all too obvious from my comments here today, there remains much to be done.

Thank you for your interest, thank you for your concern, and thank you for your continuing efforts on behalf of creators.

Chairman BERMAN. Thank you very much, Zach.
Mr. Trainer.

**STATEMENT OF MR. TIMOTHY P. TRAINER, PRESIDENT,
GLOBAL INTELLECTUAL PROPERTY STRATEGY CENTER, P.C.**

Mr. TRAINER. Mr. Chairman, members of the committee, I thank the chairman and the committee for the privilege and opportunity to provide a summary of my full testimony regarding the issue of global IP theft. IP crimes threaten our national economic security, consumer safety, and the economic health of our employers and investors, the companies that research, develop, manufacture and distribute products that incorporate their trademarks, patents, copyrights, trade secrets, and other IP assets.

Governments around the world have enacted new and stronger IP laws, they have seized hundreds of millions dollars worth of counterfeit pirated products and prosecuted many IP criminals. Yet the overall picture of global IP counterfeiting piracy appears generally unchanged from a decade ago.

At the outset, I outline some of my recommendations. On the domestic front, they are to instruct Customs to adopt its proposed IP rules that were first published in October 2004.

Strengthen IP enforcement by providing clear ex officio authority. Improve consumer protection against counterfeit and pirate products by decreasing dependence on post-entry audits. Amend relevant laws to clearly authorize enforcement actions against infringing goods that are being exported and moving in-transit through the United States.

Strengthen the legal provisions to permit judicial forfeiture of infringing goods and the collection of penalties and fines.

Increase IP-dedicated Customs officers to IP enforcement, and fund executive branch agency programs to specifically address the U.S. demand side for infringing goods.

My recommendations for the United States on the global front are to continue efforts to raise IP enforcement standards with our trading partners through free trade agreements, and I would echo the comments that have been made already by my fellow panelists here with regard to Canada.

Also to work with intergovernmental organizations to promote increased enforcement activity and new standards. Provide better IP enforcement assistance programs for our trading partners and expand IP technical assistance programs to include IP awareness. Our challenge.

Today's market reality provides counterfeiters and pirates with almost unlimited opportunities. Piracy and counterfeiting problems pose serious public health and safety risks, some of which have been well-documented while others have not.

Some recent examples include cases involving construction cranes, toothpaste, toothbrushes, spacecraft parts, lifestyle drugs, eye toner and cosmetic lenses.

The role of the Internet is implicated even where hard goods are involved. Although products must still be transported, the Internet is used to offer counterfeit and pirate goods, to take orders for goods and to conduct the financial transactions. Counterfeiters and pirates can easily take advantage of increased bandwidth, an ever-

faster Internet, a global digital system that grows hourly, and a global system of trade facilitation that promotes uninterrupted movement of goods.

With regard to volume and some of our conclusions, the latest available annual Customs IP seizure statistics from the United States, the European Union and Japan, total over 80,000 cases. These Customs statistics are just a piece of the puzzle in fitting together the picture of global piracy and counterfeiting, because not every Customs administration has detailed statistics of its IP border enforcement activity.

U.S. IP owners are injured around the world. For example, in Uganda, Procter and Gamble reported that it had lost 20 percent of market share during a 3-month period because of fake counterfeit products.

Some of the most startling cases have occurred more recently, years after IP enforcement has been highlighted globally, and years after government and industry have made it a priority issue.

One case involved a joint U.S.-EU effort that resulted in the seizure of over 360,000 integrated circuits and computer networking components. A second case involved Cisco computer network products that made their way to the FAA, FBI, and other sensitive U.S. agencies.

Separately, a 19-month long investigation by Customs resulted in charging 29 individuals with conspiracy to smuggle 950 shipments of counterfeit goods into the United States. The estimated value of the seized goods, had they been genuine, was \$700 million.

The cases against the defendants involved charges of money laundering, smuggling, and conspiracy to import counterfeit goods. The few cases mentioned here point to a global piracy and counterfeiting problem that goes far beyond the old notions of mom and pop operations.

The quantities involved, the value of goods in these cases, and the global distribution channels linking manufacturers on one continent to distributors and sellers on another, point to a more sophisticated network.

As the last case above demonstrates, today's global trade in counterfeit and pirate products is a business and includes people in the operation that know how to move products.

The more troubling aspect of these cases is that after many years of highlighting this problem, and attacking the problem with more raids, seizures and destruction of goods, as well as imprisonment of defendants, we continue to see what seems to be a growing onslaught of illegal activity.

The fact is that all the enforcement actions by the U.S., EU and other government, and their law enforcement authorities, have not deterred criminals from engaging in massive scale counterfeiting and piracy.

In conclusion, what is clearly evident is that the singular message of IP enforcement is insufficient and inadequate. Government and industry must become much more creative and imaginative in their messaging about IP.

What are the benefits and advantages of intellectual property? We need to improve our ability to demonstrate why intellectual

property, in and of itself, is good for all, and balance the enforcement message with something that is positive.

I look forward to responding to any questions the committee may have. Thank you very much.

[The prepared statement of Mr. Trainer follows:]

Written Testimony of
Timothy P. Trainer
Global Intellectual Property Strategy Center, P.C.
Before the
House Committee on Foreign Affairs
Sinking the Copyright Pirates: Global Protection of
Intellectual Property

April 6, 2009

Mr. Chairman and Members of the Committee, good morning. First, I thank the Chairman and the Committee for the privilege and opportunity to address the very important issue of global intellectual property (IP) theft. This problem impacts our national economic security, consumer safety and the economic health of our employers and investors—the companies that research, develop, manufacture and distribute products that incorporate their trademarks, patents, copyrights, trade secrets and other IP assets that are being stolen to generate revenues for an illegal and underground economy.

It is unfortunate that since 2003 when I testified before the House Committee on International Relations regarding this same issue, the overall situation has not dramatically improved, but instead, may have deteriorated. Indeed, governments around the world have enacted new and stronger IP laws and thousands of seizures have occurred and removed hundreds of millions of dollars worth of counterfeit and pirated products from the stream of commerce. In addition, there have been successful prosecutions, yet, the overall picture of IP counterfeiting and piracy appears generally the same, if not worse.

While I understand that this may not be the most appropriate Committee to address with regard to funding requests, the ability to improve our efforts will require funding government efforts to combat this problem.

RECOMMENDATIONS

At the outset, the following recommendations to combat the scourge of counterfeiting and piracy are provided. First, the recommendations for domestic actions are to:

1. Instruct U.S. Customs and Border Protection (CBP) to adopt its proposed IP rules that were published on October 5, 2004, that will help IP owners and CBP improve overall enforcement;
2. Strengthen border and criminal enforcement to provide for clear ex officio IP enforcement by CBP and U.S. Immigration and Customs Enforcement (ICE), FBI and the Justice Department in accordance with our laws and Free Trade Agreements;
3. Improve consumer protection against counterfeit and pirate products by instructing CBP to take immediate steps to seize infringing goods before they are released and subject to redelivery, which may not be possible once goods are in the stream of U.S. commerce;
4. Amend relevant trademark, copyright and customs laws to clearly authorize enforcement actions against infringing goods that are being exported and moving in-transit;
5. Provide the Department of Homeland Security (DHS)/CBP attorneys the legal authority to collect administrative fines and pursue judicial forfeiture of infringing goods, including in cases when the Department of Justice refuses to pursue these cases;
6. Increase IP-dedicated CBP/ICE officers to IP enforcement;

7. Fund Executive Branch agency programs to specifically address the U.S. demand side for infringing goods with *new* and *creative* ways of educating consumers and raising IP awareness; and
8. Monitor the inter-agency cooperation and coordination of IP investigations and cases (re-dedicated effort through the National IPR Center).

Second, the recommendations for actions globally are to:

1. Continue efforts to raise IP enforcement standards in the territories of our trading partners regarding criminal and border enforcement;
2. Use inter-governmental organizations such as INTERPOL and the World Customs Organization, to promote increased enforcement activity and new standards;
3. Identify cases that strike at organized crime groups;
4. Provide better IP enforcement assistance programs that address the operational implementation of enforcement activity, not just changes in laws; and
5. Expand IP technical assistance programs to include IP awareness raising among the general public abroad by:
 - a) Balancing the emphasis on enforcement with more programs addressing the benefits of IP; and
 - b) Using technology to create more interesting IP education programs.

PIRACY & COUNTERFEITING—The Challenge

Initially, we should understand that the American consumer is bombarded by IP daily, but may have little knowledge of this fact. From the clothes that an individual chooses to wear at the beginning of the day, which bear labels that contain trademarks, until the time he or she goes to bed, setting the alarm on a radio or clock or cell phone, which also bear trademarks or logos, the individual has been exposed to so many forms of IP that it would be difficult to keep track of it all. Our cell phones, laptop computers and music devices all incorporate multiple forms of IP—copyrights, trademarks, patents and, most likely, some trade secrets. Basically everything has someone’s logo or trademark as well as containing other IP.

Today’s market reality provides counterfeiters and pirates with almost unlimited opportunities. Beyond the more obvious and usual products being pirated and counterfeited, today’s piracy and counterfeiting problems pose serious public health and safety risks, some of which have been well-documented while others have not. Some recent examples include:

- construction cranes,¹
- toothpaste,²

¹ Eight TEREX crawler cranes found in China. Terex is a U.S.-based company. <http://www.cranelift.com.au/Article/Counterfeit-Terex-Demag-cranes-found-in-China/469323.aspx> (February 27, 2009).

² “2 NYC men plead guilty in fake-toothpaste caper.” The pair was scheming to distribute half a million tubes of counterfeit toothpaste. Thomson Financial News (August 22, 2008).

- toothbrushes,³
- parts for space craft,⁴
- lifestyle drugs,⁵
- eye toner,⁶ and
- cosmetic lenses.⁷

These are just a few examples among thousands and the occurrences are around the world. Counterfeit cigarettes have been tested and found to contain arsenic, India and Uganda report growth in counterfeit auto spare parts, and Indonesia and other countries report that farmers are victimized by fake fertilizer and seeds, which will have damaging effects on their agricultural sector.

In addition, the role of the internet is implicated even where hard goods are involved. Although products must still be transported, the internet is used to offer counterfeit and pirate goods, to take orders for goods and to conduct the financial transaction. As a result, we face a situation where the counterfeiters and pirates use all of the old and new technological tools available to conduct their underground and illegal business while the resources available to industry and governments have not expanded to the same degree as the technology or as fast.

Counterfeiters and pirates can easily take advantage of increased bandwidth, an ever faster internet, a global digital system that grows hourly, and a global system of trade facilitation that promotes uninterrupted movement of goods. Given this situation, then adding on the current global economic crisis that causes companies to make massive cutbacks in personnel and budget, we have a global environment that pirates and counterfeiters could have only fantasized about when they were already profiting off the backs of legitimate companies before the economic crisis.

PIRACY & COUNTERFEITING—Volume and Simple Conclusions

During fiscal year 2008,⁸ CBP seized 14,992 shipments containing \$272.7 million dollars worth of counterfeit and pirate products.⁹ Among the customs administrations of the 27

³ “*Health Canada: Counterfeit Toothbrushes Found on the Canadian Market*,” Marketwire Canada (February 16, 2009). Counterfeit toothbrushes falsely labeled as Colgate Massager, Colgate Navigator, Oral B Classic 40, Oral B Contura and Colgate 360 were found in commerce. The toothbrushes posed a choking risk because bristles were inadequately fastened and were dislodging in the user’s throat.

⁴ Stewart Powell “*Counterfeit parts bite NASA, hike costs Agency has worked years to track down fakes*,” Houston Chronicle (March 6, 2009).

⁵ Mark Waghorn, “*Coke Dealers Cash In with Fake Viagra*,” Daily Star (UK) (March 2, 2009). The co-founder of the European Alliance for Access to Safe Medicines stated that narcotics dealers were turning to pharmaceuticals because the profit margins are so much greater and the risks far smaller.

⁶ “*Don’t fall victim to false eye toner claims*,” Toner reportedly causing serious eye infections by users of counterfeit products. New Straits Times (Malaysia) (March 19, 2009).

⁷ “*Blogshops warned to stop contact lens sales*,” Government issues a warning about cosmetic lenses causing corneal ulcers or conjunctivitis. Straits Times (Singapore) (March 10).

⁸ The U.S. Government’s fiscal year was October 1, 2007, to September 30, 2008.

European Union member states, they engaged in over 43,600 cases involving IP violations in 2007.¹⁰ Japan's customs administration reported that it had 22,600 cases of suspected infringement in 2007.¹¹ These customs statistics are just a piece of the puzzle in fitting together the picture of global piracy and counterfeiting because not every customs administration has detailed statistics of its IP border enforcement activity.

The president of the Federation of the Swiss Watch Industry stated recently that his industry loses globally \$700-\$800 million dollars per year.¹² One UK warehouse raid in late 2008 resulted in the seizure of well over three million dollars worth of counterfeit Nike, Adidas, and Reebok sportswear, found in 15,000 boxes.¹³ In December 2008, police in Sydney, Australia, reported the largest ever DVD seizures as it confiscated a million copyright infringing items during coordinated raids on five locations the same day.¹⁴ Also in December, French Customs found 10 tons of counterfeit Ferrero Rocher chocolates in the back of a truck.¹⁵ In January 2009, UK Customs uncovered roughly three million dollars worth of counterfeit footwear.¹⁶

Poorer national markets are not overlooked by counterfeiters. During a 10-month period, Tanzanian authorities found and stored counterfeit goods—tube lights, energy savers, extension cables, bulbs and shoe polish—that were destroyed at the end of 2007.¹⁷ The real concern in Tanzania is that authorities believe that drug barons are moving into the lucrative market for counterfeit goods and importing the illegal products. Tanzanian officials admitted that the fight against counterfeits was a war against very powerful individuals with a lot of money who once engaged in illegal drug trafficking. Trafficking in counterfeit goods is a way to launder the money.¹⁸ The head of the country's Fair Competition Commission stated that the increased counterfeiting activity was a recent development and involves electrical goods, medicines, batteries, matches, tires, motor vehicle spare parts, shoe polish and toothpaste and is expanding. A Tanzanian industry group estimates that 20% of all goods available in the major trading centers are fake goods.¹⁹ In Uganda, Procter & Gamble, a U.S. multi-national, reported that it had lost

⁹ http://www.cbp.gov/xp/cgov/newsroom/news_releases/01082009.xml. As recently as 2005, CBP's seizures were just over 8,000 shipments.

http://www.cbp.gov/xp/cgov/trade/priority_trade/ipr/seizure/seizure_stats.xml.

¹⁰ Statistics for 2008 were unavailable when preparing this testimony.

http://cc.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_cn.htm.

¹¹ IPR Enforcement, The Role of Japan Customs, 2008 Report.

http://www.customs.go.jp/mizugiwa/chitcki/apr_p.pdf.

¹² "Hublot Turns to WISEkey's Smartcard Technology to Fight Counterfeiting of Its Luxury Watches," Business Wire (March 24, 2009).

¹³ "Warehouse raid nets pounds 3m in fake sportswear," Sunday Mercury (UK) (November 30, 2008).

¹⁴ "1m Pirated movie, music discs seized," ABC Premium News (Australia) (December 3, 2008).

¹⁵ "Customs officers seize 33,000 boxes of fake Ferrero Rocher chocolates worth £223,500,"

<http://www.dailymail.co.uk/news/worldnews/article-1100833/Customs-officers-seize-33-000-boxes-fake-Ferrero-Rocher-chocolates-worth-223-500.html>.

¹⁶ "2 million pounds fake shoe find," The Sun (UK) (January 12, 2009).

¹⁷ Joseph Mwainyaye, "Drug Barons Now Enter Fake Goods Market," East African (Kenya) (January 1, 2008).

¹⁸ Id.

¹⁹ Sarah McGregor, "Tanzania: Cheap Imitation Goods Flood Markets in Capital," Inter Press Service (August 20, 2008).

20% of market share during a three-month period because of fake products. Counterfeit feminine hygiene products had entered the market and displaced P&G's products.²⁰

Of the many results from enforcement actions, some of the most startling have occurred more recently, years after IP enforcement has been highlighted globally and years after governments and industry have made it a priority issue. In February 2008, U.S. and EU authorities announced that a joint enforcement action had resulted in the seizure of over 360,000 integrated circuits and computer networking components, estimated to have a value of over 1.3 billion Euros (US \$1.7 billion dollars), illegally bearing over 40 different trademarks, including those belonging to Intel and Cisco.²¹ Within days of the U.S.-EU announcement, U.S. and Canadian authorities announced that a joint initiative had resulted in more than 400 seizures of counterfeit Cisco network hardware and labels with an estimated retail value of more than \$76 million.²² Because of the lengthy investigation, numerous defendants were identified and federal prosecutions pursued, including the indictment against one individual who is believed to have purchased and imported counterfeit computer network hardware from China and sold the counterfeit Cisco products to retailers of computer network products throughout the United States, but also shipped some of the counterfeit hardware directly to the Marine Corps, Air Force, Federal Aviation Administration, FBI, defense contractors, universities and financial institutions.²³

A 19-month long investigation by CBP and ICE resulted in charging 29 individuals with conspiracy to smuggle 950 shipments of counterfeit goods (watches, footwear, and other products) into the U.S. The defendants were in California, New Jersey and New York. The estimated value of the seized goods, had they been genuine, was \$700 million.²⁴ The cases against the defendants involved charges of money laundering, smuggling and conspiracy to import counterfeit goods.

The few cases mentioned here point to a global piracy and counterfeiting problem that goes far beyond the old notions of "mom and pop" operations. The quantities involved, the value of goods in these cases and the global distribution channels linking manufacturers on one continent to distributors and sellers on another point to a more sophisticated network. As the last case above demonstrates, today's global trade in counterfeit and pirate products is a business and includes people in the operation that know how to move products, but are rarely caught. The more troubling aspect of these cases is that after many years of highlighting this problem and attacking the problem with more raids, seizures and destruction of goods and imprisonment, we continue to see what seems to be a growing onslaught of illegal activity. The fact is that all the enforcement

²⁰ Caroline Batenga, "Fake Sanitary Towels Flood Market," *New Vision* (Uganda) (October 19, 2008).

²¹ "U.S., EU Announce Joint Operation in Combating Pirated Goods,"

http://useu.usmission.gov/Dossiers/IPR/Feb2208_Operation_Infrastructure.asp. See also, "Cracking down on high-tech fakes," *Birmingham Post* (UK) (February 26, 2008).

²² "Departments of Justice and Homeland Security Announce International Initiative Against Traffickers in Counterfeit Network Hardware," http://www.usdoj.gov/opa/pr/2008/February/08_crm_150.html (February 28, 2008).

²³ *Id.*

²⁴ <http://www.ice.gov/pi/news/newsreleases/articles/070626brooklyn.htm> (June 26, 2007).

actions by the U.S., EU, and other governments and their law enforcement authorities have not deterred criminals from engaging in massive scale counterfeiting and piracy.

ORGANIZED CRIME, TERRORISM OR BOTH?

1. Role of IP Owners

The owners of copyrights and trademarks have a role in pursuing those who steal their IP assets. Nevertheless, the question is how far are they expected to go with an investigation? What is their primary role in our economies?

We need to remember that companies are basically in the business of making products and offering services as well as a constantly creating new products and improving their products in order to improve economic performance. Companies are *not* in the business of engaging in criminal investigations and routinely running down bad guys. However, today, many companies do some of the basic evidence gathering relying on private investigators and other resources at their disposal.

Indeed, I know of IP owners who have spent hundreds of thousands of dollars in gathering evidence, conducting civil seizures, and identifying product drop points as well as off-shore banks involved in transactions in order to “package” a case for possible criminal investigation and having nothing really happen once the case is handed over to law enforcement. When, at the very least, an organization is clearly involved in trafficking in counterfeit goods, how far are IP owners expected to go with such “police” activities?”

There is no doubt that the CBP/ICE cases mentioned above involved a criminal organization and there is no doubt that my client had uncovered a group acting in an organized manner to traffic in counterfeit goods. Today, the real challenge is to determine if these criminal organizations mask a more dangerous activity by funding terrorist groups.

IP owners cannot be expected to pursue investigations to the point of identifying, without a reasonable doubt, that the funds are going to terrorist organizations. IP owners are companies putting products into the market place and are not in the business of conducting undercover police operations. While IP owners today are expected to provide assistance, there are limits to what can be expected of them.

2. Links to Terrorism

As a past president of the International AntiCounterfeiting Coalition (IACC) and primary drafter of the organization’s Special 301 submission to the Office of the U.S. Trade Representative, I can say that companies are extremely cautious regarding their reporting of direct terror group involvement in counterfeiting and piracy. We can appreciate the fact that information must be carefully guarded in order to prevent corporate employees from being placed in danger because of information obtained and shared. This is one

reason why I never made specific and direct statements about the involvement of terrorist groups in our submissions. Companies are willing to provide information as long as steps are taken to protect their on-the-ground employees. In general terms, I can say that there were IACC members who believed that the activities in some countries involved terrorist group members.

One of the early articles by the U.S. Government regarding possible links between counterfeiting and piracy profits and terrorist groups was published by U.S. Customs in late 2002.²⁵ Since then, there have been prominent law enforcement officials warning of the dangers that the massive trade in counterfeit and pirate activity provides funding for terror groups. INTERPOL's Ron Noble has not shied away from these warnings.²⁶

In 2006, a BBC article quoted a DHS official in the tri-border area (Argentina, Brazil, and Paraguay) expressing concern over the amount of money made from drug smuggling, gun-running and counterfeiting moving from a Lebanese national in the tri-border area to unknown individuals or groups.²⁷ The fund transfers have involved U.S. banks and there have been attempts to prosecute American banks for transferring funds to banks in the Middle East.²⁸

Toward the end of the holiday shopping season in 2007, an article warned consumers that the purchase of cheap CDs, DVDs, perfumes and other items may have helped to raise money for one of the world's most-notorious terror outfits – the group held responsible for the slaughter of US journalist Daniel Pearl.²⁹ The UK's M15 was targeting British-based supporters of Jaish-e-Mohammed, a pro-Kashmiri group dedicated to gaining the independence of the disputed territory as well as aiming to destroy the United States and India.

In the United States, the Justice Department, coordinating with ICE, DEA, and the FBI, announced that it had charged six people with trafficking in counterfeit goods. Reviewing the ICE press release and a related story covering the case in the Los Angeles Times, it appears that a multi-year counter-terrorism and narcotics case turned up a major counterfeiting operation.³⁰ Although no one had been charged with terrorism related offenses, federal and local law enforcement sources said a focus of their investigation has been the possibility that proceeds from the alleged crime rings have gone for years to Lebanon and the militant Islamic group Hezbollah.³¹ The ICE press release stated that the group had arranged for the importation of nearly \$20 million in counterfeit goods.

²⁵ "Financing Terror," <http://www.cbp.gov/xp/CustomsToday/2002/November/interpol.xml> (November 2002).

²⁶ "Funds for Terrorism Through Counterfeit Goods," AP (May 25, 2004).

²⁷ "Tri-Border Transfers 'Funding Terror'," <http://news.bbc.co.uk/2/hi/americas/6179085.stm> (December 14, 2006).

²⁸ Id.

²⁹ "The Glasgow Connection," Scotland on Sunday (UK) (December 23, 2007).

³⁰ "U.S. charges six with trafficking in counterfeit designer clothing,"

<http://www.ice.gov/pi/news/newsreleases/articles/071115newyork.htm> (November 15, 2007); Greg Krikorian, "Six are Held in Bogus Labels Probe," Los Angeles Times (November 15, 2007).

³¹ Greg Krikorian, "Six are Held in Bogus Labels Probe," Los Angeles Times (November 15, 2007).

In March 2008, speaking at the Tech Museum of Innovation in San Jose, Attorney General Mukasey stated that counterfeiting and piracy generate huge profits for criminal syndicates, and in some cases even terrorist groups who view IP crime as a lucrative business, and see it as a low-risk way to fund other activities.³² But, in its 2008 Special 301 Report, the Office of the U.S. Trade Representative toned down the rhetoric as it reported about the tri-border area that “although Ciudad del Este remains the hub for pirate activities in Paraguay, industry reports that trade there has declined and that commercial concentrations are shifting to other cities.”³³

The overall levels of trade in counterfeit and pirate products are sobering and the reality is that the enforcement efforts undertaken over the past several years have done little to deter this type of crime. Thus, a simple “connecting the dots” of the global situation should lead us to the conclusion that criminal groups and organizations, including terrorist organizations, are not sufficiently concerned to abandon this mode of profiteering in order to fund their objectives. To the contrary, the fact that IP owners are not going to undertake criminal undercover operations and law enforcement is too thinly stretched and being segmented into placing priorities on health and safety related counterfeits leaves open a vast array of products that can be counterfeited and pirated with little attention paid.

As U.S. law enforcement begins to place greater emphasis on counterfeit products that pose a health and safety risk, it leaves to organized crime and terror groups a vast range of counterfeit products that they may profit from with little or no risk.

THE RECOMMENDATIONS--DOMESTIC

1. U.S. CBP, October 5, 2004 Proposed Rules

On October 4, 2004, the Bush Administration announced its “STOP” initiative at a press conference that included an Under Secretary for the Department of Homeland Security.³⁴ As part of DHS’s fact sheet about the STOP initiative, it stated that copyright protection by CBP would be enhanced.³⁵ The “enhancements” have never occurred because after the publication of the notice of proposed rules on October 5, 2004, the rules were never finalized and implemented.³⁶

³² Attorney General Michael B. Mukasey, San Jose, CA (March 28, 2008).

³³ http://wwwustr.gov/assets/Document_Library/Reports_Publications/2008/2008_Special_301_Report/asset_upload_file553_14869.pdf

³⁴ Strategy Targeting Organized Piracy (STOP). <http://www.america.gov/st/washfile-english/2004/October/20041004170546MBzemoG09298059.html> (October 4, 2004).

³⁵ Specifically, the Fact Sheet states “Enhancing the protection of sound recordings, motion pictures and other audio-visual works by allowing rights holders to record their intellectual property with CBP without first registering it with the U.S. copyright office.”

http://www.ice.gov/pi/news/factsheets/STOP_FS100404.htm.

³⁶ Proposed Rule, Recordation of Copyrights and Enforcement Procedures To Prevent the Importation of Piratical Articles, 69 Fed. Reg. 59562 (October 5, 2004).

Today, copyright owners still wait for the CBP proposed changes that would aid their quest for a higher level of protection at the U.S. border. Some of these enhancements would include greater disclosure of information about the pirates so that legal action can be taken or so that they can be pursued in the countries of export, pre-copyright registration recordation with CBP, and CBP's explicit authority and actions against the importation of circumvention devices. The copyright industries continue to wait for DHS to finalize the improvements that were proposed by the agency itself.

2. *Ex Officio Enforcement*

The copyright and trademark industries should be assured that they can receive the level of protection that the U.S. has negotiated in various free trade agreements (FTAs). In the sections dealing with border measures and criminal enforcement, there is clear language that the protection and enforcement of copyrights and trademarks shall not be dependent upon the filing of a formal complaint.³⁷ While IP owners have a responsibility for providing law enforcement authorities with training so that they may have sufficient information and knowledge to identify suspect goods either entering the U.S. territory or moving in the stream of commerce, enforcement authorities should have clear authority to take enforcement actions on their own when there is sufficient suspicion that goods may infringe copyrights and trademarks.

3. *Improve U.S. consumer protection: CBP reliance on post-entry audits allows questionable products into the stream of commerce*

One of the elements of ICE's (CBP) efforts to improve IP border enforcement under the STOP initiative is to conduct post-entry audits to verify that an importer is authorized to use the IP on the products that have been imported.³⁸ In view of the growing instances of counterfeit goods entering the U.S. market that pose direct consumer health and safety risks, attempts to conduct "enforcement" after goods have entered seem futile. Once goods are released and moving in the stream of commerce, CBP's authority to demand redelivery of the goods is an empty gesture.

The risk to the consuming public has increased in view of the expanded range of products being counterfeited. One Chicago-area company estimated that half a million counterfeit circuit breakers had entered the U.S. market³⁹ and the Consumer Products Safety Commission issued a recall order.⁴⁰ In June 2007, counterfeit Colgate toothpaste was found in four states prompting efforts to locate and remove the product from

³⁷ The text of the U.S.-Morocco Free Trade Agreement includes examples of this level of protection, which can be found at 15.11.23 and 15.11.26(b)(iv).

http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Morocco_FTA/Final_Text/asset_upload_file797_3849.pdf

³⁸ ICE Fact Sheet, http://www.ice.gov/pi/news/factsheets/STOP_FS100404.htm (October 4, 2004).

³⁹ Bob Tita, "Square D Hunts Knockoffs: Counterfeit Circuit Breakers from China Could be Fire Hazard," Crain's Chicago Business, Vol 30, Issue 51 (December 17, 2007).

⁴⁰ Release #08-054, <http://www.cpsc.gov/CPSC/PUB/PREREL/prhtml08/08054.html> (October 30, 2007).

commerce.⁴¹ In announcing the 2008 IP seizures, CBP reported that the value of counterfeit goods posing public safety and security risks increased 124% over the previous year.⁴²

In view of the growing public safety risks posed by counterfeit goods, reliance on a detection method that allows goods to be entered into the stream of commerce then recalled seems to be a procedure that should be reversed. If CBP does not have sufficient staffing, then Congress should appropriate funds to increase CBP's ability to inspect and deny entry of goods that pose these risks at the time of entry, not after entry into commerce.

4. Clear Authority to stop exports and goods in-transit

First, I commend Congress on its passage of the PRO IP Act of 2008 that broadened the authority of CBP/ICE to enforce IP rights when goods are attempted to be exported or are moving in-transit through the U.S. The authority now exists in Title 17, U.S. Code, Section 602, for CBP to exercise its enforcement against attempts to export copyright infringing goods.

In addition, the PRO IP Act of 2008 broadened conduct that will be subject to criminal penalties under the trafficking in counterfeit goods provision by subjecting individuals who attempt to export or move goods-in transit to criminal sanctions.

Industry believes that this effort should continue by inserting similar language in relevant sections of the Trademark and Customs laws in order to make the legal authority explicit in all relevant laws.

5. Deterrence: Improve CBP's Penalty and Administrative Fine Collections

One of the weakest elements of our system is the current rate at which CBP collects administrative fines assessed as a result of IP violations. The Government Accountability Office (GAO) reported that CBP officials responded that the enforcement penalties are not an effective deterrent. Upon reviewing CBP penalty data for fiscal years 2001 through 2006, GAO found that less than 1 percent of the penalty amounts were collected.⁴³ A concrete example is that in 2006, CBP assessed \$136.6 million in penalties and collected \$600,000.

A related problem is judicial forfeiture of infringing goods and the administrative fines that CBP assesses for counterfeit goods. Offenders are able to avoid forfeiture of infringing goods and paying administrative fines when the Department of Justice fails to represent the Government's interest in the forfeiture proceedings. This, essentially, allows the goods to be returned to the offender and entered into commerce.

⁴¹ "Colgate Finds Fake Toothpaste in 4 States,"

http://money.cnn.com/2007/06/14/news/companies/colgate_poison/index.htm?cnn=yes (June 17, 2007).

⁴² http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/ipr/seizure/fy08_final_stat.ctt/fy08_final_stat.pdf

⁴³ Loren Yager, Testimony, IP Risk and Enforcement Challenges, GAO-08-177T (October 18, 2007).

Industry believes that CBP/DHS need to be given the legal authority to step into the shoes of the Department of Justice to protect the interests of the U.S. Government when Justice declines to pursue forfeiture actions and Justice's declination should not prevent CBP/DHS attorneys from representing the Government in these proceedings.

6. *Funding Additional Dedicated CBP/ICE Officers*

Congress has, through previous legislation, identified funding for dedicated Justice Department attorneys and FBI agents. In view of the importance in protecting U.S. consumers and IP owners from a global threat, CBP and ICE should receive increased attention and additional dedicated officers in the field offices, laboratories, express consignment and mail facilities. The current flood of counterfeit and pirate products cannot be stopped by current staffing levels. Industry believes that CBP/ICE, as the gatekeepers to the U.S. market, need to be well staffed and trained to improve efforts to identify and stop counterfeit and pirate products.

This effort is supported by industry. For many years, dozens of IP owners have participated in programs to train CBP/ICE/FBI and other law enforcement officers. Industry will continue to provide training at its expense in order to assist enforcement officers in their efforts to identify and seize counterfeit and pirated goods.

7. *Funding Executive Branch programs to address the U.S. demand side for infringing goods with new and creative ways of educating consumers and raising IP awareness*

The public message from the U.S. Government and IP industries has been and continues to be a singular voice advocating enforcement. Despite all the initiatives, action plans, and training programs over the past 15 years, we appear to be where we began when it comes to the global level of counterfeiting and piracy. Thus, I am forced to ask if the enforcement message falls upon deaf ears.

We need to consider the messaging and whether it "plays" well with our audience. Personally, I know the answer as we have been negligent in conducting honest reassessments of our messaging.

Where is the "prevention" program? We have vaccinations to prevent illnesses, we have driver education programs to better prepare drivers, but we have next to nothing to prevent IP theft.

The U.S. Government and IP industries lack an active, creative program that describes and demonstrates the benefits of IP both here and abroad. It is not enough to develop clever undercover investigative techniques or smarter legal theories for filing lawsuits. Creativity and innovation should also be applied to programs for U.S. consumers and our foreign audiences.

All U.S. Executive Branch agencies, while busily funding enforcement training programs, should be required to fund programs that demonstrate how students, entrepreneurs and governments may benefit from IP. This is sorely lacking and needs greater attention. At a time when our economy is suffering and individuals are losing jobs, we need to communicate a message that demonstrates how new and old businesses may benefit from reliance on IP assets as a driver of growth. Therefore, I urge members of this Committee, working with your colleagues, to take steps that require our Government to do more to educate the public about the positive benefits of IP.

8. Monitor the inter-agency cooperation and coordination of IP investigations and cases (re-dedicated effort through the National IPR Center).

Any effort to combat global counterfeiting and piracy requires a dedicated effort by each responsible enforcement agency to coordinate efforts and cooperate in order to stretch limited resources and to bring all available expertise to the problem. The re-dedication of the National IPR Center in 2008 may be interpreted in different ways in light of the fact that the National IPR Center offered its first conference for members of Congress and industry in 2002.⁴⁴ In view of the re-dedication of the Center with more agencies now part of the Center, I encourage Congress to monitor its activities and inquire regularly about the level of coordination that occurs.

Today's IP cases are complicated and often involve foreign jurisdictions. Thus, the need to use the expertise and skills of individuals from different agencies is the only way to make any progress against the ongoing threat of IP crimes.

THE RECOMMENDATIONS—INTERNATIONAL

1. Raising IP Standards

The U.S. must continue to work with trading partners in raising IP enforcement standards. In the various FTAs that the U.S. has concluded, the Government has been successful in obtaining agreement that IP enforcement will be improved by expanding legal authority for border measures, criminal investigations and internet based activities. These efforts must continue

2. Inter-governmental organizations

U.S. law enforcement needs to continue to work with their counterparts in foreign countries in order to pursue the international organizations involved in IP crimes. The cases with EU authorities in detecting the computer components and with Canadian authorities are crucial to having any success against international crime rings involved.

In addition, the U.S. must continue to work with the World Customs Organization, INTERPOL, EUROPOL and other organizations in order to develop and encourage higher enforcement standards. These inter-governmental organizations may also be

⁴⁴ <http://www.fbi.gov/pressrel/pressrel02/outreach071702.htm>.

important conduits for the flow of information between law enforcement authorities of different countries and provide critical intelligence.

All these initiatives must have an industry component in order to encourage IP owner involvement and to encourage both sides to identify new trends and identify new “players” to the extent such exchanges are possible.

3. Training—IP Enforcement Authorities

The operational enforcement training that is being provided should look to lengthen the periods of training and target implementation. Many countries continue to struggle with the implementation aspect of IP enforcement. Legislative change, while long and difficult, results in changes of words in law whereas those changes must eventually be carried out in the field.

The current construct that effective training can be provided in a matter of days should be rethought. Many countries struggle in understanding how legislative changes are translated into action. As a result, governments abroad fail to appreciate the resources and time needed to train field officers in IP enforcement.

If the U.S. and its industries expect any substantial improvement, both government and private sector resources will need to be dedicated to this effort. U.S. agencies and industries may need to identify more personnel able to be placed on the ground for extended periods with customs, police, prosecutors and others in order to provide day-to-day assistance and training. The two or three day programs are insufficient in length and detail to expect that the result of such workshops will dramatically change the current situation.

Indeed, as the U.S. raises IP enforcement standards through the FTAs, we cannot expect that our trading partners will be able to deliver the level of IP enforcement they have agreed to simply because they have signed an FTA or because they have been given a transition period. They must be shown how to implement the new standards beyond the simple changes in legislation.

4. Broaden the IP Message

The U.S. Government and U.S. Industry must begin a shift in its foreign message by working toward a balance in its messaging. If the current counterfeiting and piracy levels have any meaning, one conclusion is that the overwhelming emphasis on enforcement has not achieved the desired objective.

The Government-industry message must begin to address broader IP issues. The message cannot focus on simply arresting individuals, destroying goods and conducting raids—all of which conjure up negative pictures in the minds of many in the general public.

Instead, we must work toward a positive IP message that clearly demonstrates that IP is for anyone in any country, not simply for the U.S. and its developed country allies. Our approach must become more positive, demonstrate IP benefits, and use technology to reach more people. While there is no guarantee that any strategy will work, the evidence now demonstrates that the emphasis on enforcement, while it provides some concrete results, has not worked in light of the current magnitude of infringement. The enforcement emphasis must be balanced by another approach. Absent some reassessment in the strategy to fighting global IP theft, we will be discussing the same issues again in five and ten years, except that the volume of infringing goods will have escalated beyond our estimates.

CONCLUSION

Governments and industry will have to find a way to continue funding their IP enforcement programs during this trying economic period. Moreover, governments and industry will have to find a way to increase their resources to combat IP theft. At the same time that we continue to conduct enforcement actions, it is absolutely necessary to improve our IP message to the rest of the world, helping them to understand the role of IP in economic improvement and growth.

I thank the Committee for allowing me to provide this testimony and will be happy to entertain any questions that Members may have.

Chairman BERMAN. Well, thank you all very much. There are a lot of specifics in your testimony that I think we can pursue. We will now move from that California thing back to Washington for strict enforcement of the 5-minute rule, with the exception of our colleague from Texas who missed a chance to have an opening statement. So we will give Sheila Jackson Lee a few extra minutes.

The 5 minutes includes not only our speeches and our questions but your answers, so members should tailor the initial comments accordingly. I will yield myself 5 minutes.

I guess this is maybe more particularly to Mr. Cook and Mr. Horowitz, but anyone on the panel who wants to add to it.

You have talked about some situations and made some suggestions. Mr. Trainer, you raised some very specific issues which, I think, make sense for me to talk with Mr. Rangel on the Ways and Means Committee about.

But one of the things I have heard for many years, as we move on this path, is you guys are suffering these losses, not primarily because of piracy, because the industry hasn't adopted new business models. Whatever truth there was to that in the late 1990s, the circumstances have changed, and I was wondering if either or you, and anyone else on the panel, could describe the efforts taken by the industry to help compete with free, and what efforts can Congress take to help you outside the marketplace in other countries? Particularly your efforts to provide consumers what they want, the way they want it.

Mr. COOK. I think that anyone that has taken a look at the business in the last year or so will definitely not subscribe to the theory that the industry is not doing anything. I can speak for Disney, which, actually, I think we have been the leader in most of—meeting these new challenges and new business models. We have embraced the view that the best way to meet these challenges is to make our products readily available through legitimate means, on a well-timed, well-priced basis.

In doing that, we were the first to offer TV shows and full-length feature films for downloads on iTunes. We were the first to put our movies on day-and-date rentals with the DVD release, and the first company to stream our television content online, trying to get the material out faster, in legitimate ways, and at prices that are reasonable.

It is always very difficult to compete with free, but we are trying to do that, get them on a timely basis, and well-priced, and to the public in the best means we possibly can through the Internet.

Chairman BERMAN. Mr. Horowitz.

Mr. HOROWITZ. Last year, Universal Music probably had over 500 deals to offer our music to all sorts of new innovative business models, everything from downloads to subscription services, to ad-supported services where it feels like free for the consumer, but rights holders and artists are compensated.

I think the lesson of Napster for the music industry is that if we don't find ways to make our music available, legitimately, to the consumer, the void will be filled by illegitimate users, and we have been, not just Universal, but the music industry, generally, have been probably at the forefront of finding new ways to bring our music to consumers. It is hard to compete with free. It is hard to

compete with countries that seem to have absolutely no respect for intellectual property, and I think it is important for us to have these kinds of meetings with people like you, because education becomes a key way of making people aware of the problem.

Chairman BERMAN. Thank you. I have a little over 1 minute left. You spoke about the Visa/MasterCard issue with alloffmp3.com, and a number of us met with their representatives, to get them to discontinue.

Are there other kinds of things that we, in Congress, can do, apart from the legislative approach, that could be helpful here? Question: Should Baidu be allowed to be listed on the stock exchange without some of the practices that some of our user-generated sites are now engaging in in terms of filtering? Any thoughts on how we bring pressure to bear on American interests which support international piracy, consciously, or just by indirect facilitation?

Mr. HOROWITZ. Well, Visa and MasterCard are sort of the Good Housekeeping seal of approval, and they provide an aura of legitimacy to whatever sites use their services, and it was absolutely critical, when Congress people met with Visa and MasterCard, and conveyed this to them, and ultimately, they backed down.

Chairman BERMAN. I think in order to enforce the rule on myself, I am going to say our time is up. No. I know. But we will come around again. So I apologize. But the ranking member is recognized for 5 minutes.

Ms. ROS-LEHTINEN. Thank you so much. Thank you for pointing out all of the domestic measures that have been taken, need to be taken, and international action as well.

I was wondering if Mr. Soderbergh could flesh out, a little bit, his idea about deputizing the industry itself in order to take action and wanted to know the panelists' thoughts on that.

Mr. SODERBERGH. Well, when you go into Target and shoplift, there is a security guy from Target that catches you, and then they make a decision, whether or not they are going to take you to the police and prosecute you. At the very least, you are not allowed to go into Target anymore. And I just feel like we are in a similar situation, that there aren't enough police officers in the world to sit at Target and Wal-Mart, and all the places where crimes are being committed. It wouldn't be very difficult for us, if we were given, you know, this ability to identify the people who are making it easiest to transmit this copyrighted material, and if we had some sort of, you know, graduated mechanism along the lines of the French model.

First, they are contacted through the Internet. Then they are contacted through the mail. Then the third time they get pulled for a year. I mean, I think that any solution that involves suing people and taking people into court is just not going to work. It is not practical,

and on a public relations level, it is disastrous.

Ms. ROS-LEHTINEN. So you are basing it on the French model that has been successful. Are there any differences in terms of laws and procedures that you would find that might be a problem for us?

Mr. SODERBERGH. Well, I think trying to get legislation enacted, that gives us this ability, is going to be really tricky. I also think that the industry has to discuss what we are doing on the Internet now, how we are placing content on the Internet, because I think in the mind of the consumer, when you have sites, you know, that have come up recently, and which there is a lot of material available for free, most of it television, that may work in the sense that it is supposed to draw eyeballs to the show and get them to become regular viewers of the show. What I think it may be doing, though, in the minds of the consumer is, you know, promulgating this idea, that if it is on the Internet it is free, and they are going, well, I don't understand, I can get—this whole series that I love, they are giving me access to this for free. But then that same place makes a movie and they are telling me I have got to pay for it.

Then there is the pay structure itself. We are all running toward a business model that drops our price point per unit precipitously. We are now charging people the least amount of money for the easiest access to our product, when I feel like we should be looking at our pricing and making it easier for them to go out to a movie theater, for instance, and rewarding them for making that effort instead of making that the most expensive price point in our business.

But that is just, these are just my own theories.

Ms. ROS-LEHTINEN. Thank you. If you could comment, just anybody else on the panel.

Mr. HOROWITZ. Just to simplify, under the Digital Millennium Copyright Act, the ISPs have what is called safe harbor, but they are the key vehicles by which the illegal sites are able to get their music to the consumers.

We are very encouraged by conversations we are having with many of the ISPs on the music side, about this graduated response, the automatic warning system. We are having conversations, you have probably heard, with everyone from AT&T to Comcast to Cox, and we hope that they will lead to things that echo what is happening, what is being discussed in places like France and the U.K., and New Zealand.

Ms. ROS-LEHTINEN. Thank you very much. Thank you, Mr. Chairman.

Chairman BERMAN. The time of the lady has expired and the gentleman from California, Mr. Sherman, is recognized for 5 minutes.

Mr. SHERMAN. I am a bit confused as to how this French model that you propose would work. You say that the offending site gets pulled. That means that Internet users in the United States are not able to get to that site? Is that the way it would work?

Mr. SODERBERGH. I guess my limited understanding of it, it is something that was just enacted, is that the ISP in the third round is, after these two warnings, is pulled off and—

Mr. SHERMAN. I am trying to understand what pulled off means. ISP or the user?

Mr. SODERBERGH. It is the user that is on this ISP, that has been tracked as trafficking in copyrighted material.

Mr. SHERMAN. So if—

Mr. SODERBERGH. They then lose the ability to be on that site for a year.

Mr. SHERMAN. That site for a year. So you are saying if Joe Schmo in the United States logs on to a Chinese site and downloads a movie, then Joe Schmo will continue to be able to use the Internet but won't be allowed to go to that particular site again, which Chinese site will then open up 50 other sites.

Mr. SODERBERGH. Sure.

Mr. SHERMAN. It would be interesting to see how well this is working for the French.

Mr. Horowitz and Mr. Miller, what are the politics in Canada that are preventing Canada from adopting good IP protection, given the importance of the United States-Canada relationship to Canada, but also given the importance of IP industries in Canada to Canada?

Mr. Horowitz?

Mr. HOROWITZ. Well, my colleagues in Canada have taken to calling the Great White North the Great Black Hole when it comes to copyright protection. There seems to be a complete indifference, bordering on disdain, for any sort of copyright protection, which is astonishing, when you consider that this is one of our most important allies, a great trading partner, a developed nation.

They have not brought their laws into compliance with WIPO, and as a result, this has become the haven for Web sites that traffic in—

Mr. SHERMAN. Let me ask a rhetorical, extreme question. That is, should we provide any copyright protection for any video material or movie where the value-added is over 50 percent Canadian? That is a hypothetical question. Mr. Cook, I am trying to understand camcording, it seems very easy, and yet with "Wall-E," some very sophisticated criminals waited until the movie got to the Ukraine. They could have gotten it here, in the United States, a week sooner.

As I understand this camcording, all an organized crime enterprise would have to do is bribe the guy that projects the movies at the theater to just give them a special midnight screening and they could set up their camcorder.

How is it that we were successful, at least in the United States, in preventing camcording and forcing the criminals to wait until you decided to release the movie in the Ukraine?

And secondly, are these criminals sophisticated enough to then dub the movie into a dozen other languages, presumably almost as well as Disney dubbed the movie? Because I assume when they camcorded it, they only got it in either Russian or Ukrainian. I don't know which language that theater used.

They were sophisticated enough to dub it into a dozen languages but not sophisticated enough to get somebody in Hoboken to let them get it. They had to wait until it went to Ukraine.

Mr. COOK. I think what has happened in the United States is that through a lot of education with the theater owners, and with the theater managers, and with all of them, they know that it is against the law. There are countless things that go out to notify them that it is against the law to do that, and we have been suc-

cessful in catching them. It is the reason all the camcording in New York has been down so dramatically.

So I think that has been a big part of it, and, you know, the ones that are camcording, some of them are extremely sophisticated. They wait to go to Ukraine because there is no law against it. They can go in and make very sophisticated copies. Some of the copies that I brought along to show, they are maybe not quite as good as coming right out of Pixar, but it is nearly as good, and they can soon either do subtitled or actual, their own voice recordings, and all, and they are not as good but they are good enough, in many cases.

Chairman BERMAN. The time of the gentleman has expired. But the U.S. experience is a little bit like what

Mr. Soderbergh was talking about, working with theater owners, like working with store security.

The gentleman from California, Mr. Rohrabacher, is recognized for 5 minutes.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman.

So I take it from the testimony today that we are talking about several major challenges. At least the biggest, if not one of the biggest, is dealing with the downloading of material that is owned by someone else, and by the studios, and thus, the people who are involved with producing the material are not getting their money and not being paid. Downloads from the Internet. Is that what we are talking about, is one of the biggest challenges that we face?

Then isn't there a technological answer to this somewhere? I mean, I am on the Science Committee as well as on the Foreign Affairs Committee, and it would seem to me that if we have a vehicle, a technological vehicle, and that that is what is being used, isn't there a poison pill we can put into our product, that will prevent it from being downloaded unless there is something done that would identify that?

Mr. SODERBERGH. Well, I think there are two issues there. There is no question that you could probably create a sort of encryption that, you know, wreaks havoc whenever it is downloaded and played. Within days, probably, there is a very, very bright Dutch teenager that would figure out how to break that encryption.

One of my more radical solutions is to start finding those people and having them work for us. Since they are doing this for free, maybe we could pay them to beat their pals at their own game. It worked in "Catch Me If You Can." [Laughter.]

Mr. ROHRABACHER. Whose movie?

Mr. SODERBERGH. Steven Spielberg, who ought to be here as well. And then I think you would be the ones to know, that there are sort of legal ramifications about creating something like that, that even though they are theoretically trafficking in copyrighted material, the damage that you might create, that could move beyond them personally, might become a legal issue.

Mr. ROHRABACHER. Let me note that there are, in other arenas, in the intelligence arena of our Government, there are certain technologies that are in play, that I think could be put to work here, and I don't know exactly how free I am to discuss them here, however.

But with that said, I think we should thoroughly investigate—

Chairman BERMAN. Is this the one where the computer explodes?
[Laughter.]

Mr. ROHRABACHER. Well, at any rate. But I think that we should, Mr. Chairman, actually go into this, and look to see if there is a technological solution that we could bring forward to the industry, and I would be happy to talk to you about some of these things, off the record.

Also the second issue that I would like to bring up now—my time is almost up—is again Canada. See, we expect China to act like a potential enemy and an adversary to the United States. We don't expect that from Canada, and it is so disturbing to know that Canada is becoming the transshipment depot of the world for goods that are counterfeited in China,

and end up coming through Canada to come here.

What would you suggest, Mr. Horowitz, that we actually do to Canada? Give me a retaliation that we can do.

Mr. HOROWITZ. I think the most important, practical thing you could do is engage directly with the Canadian Government.

Mr. ROHRABACHER. Well, what do we threaten them with? Tell me. I am agreeing with you. I am calling on the United States Government today to retaliate against Canada, do something specific to try to get them to pay attention to something they could solve. This is definitely within their capabilities but they are intentionally not solving it.

What can we do? What is the retaliation that we should seek from our Government against them?

Mr. HOROWITZ. I don't have the answer.

Mr. ROHRABACHER. Anybody else have the answer? Come on.

Mr. SODERBERGH. Well, they are very polite. We could say please.
[Laughter.]

Mr. ROHRABACHER. Come on. Here is your chance. You have got us here. We have got somebody we can actually influence.

Mr. SODERBERGH. Well, I mean, the only thing that is going to—

Chairman BERMAN. The military option is off the table.

Mr. SODERBERGH. Exactly. [Laughter.]

Mr. ROHRABACHER. Anybody else have a—

Mr. SODERBERGH. Well, I mean, the only thing that is going to have any teeth is actually something along the lines of when their content comes this way, that it is harder for them to make the kind of profits on their material that, you know, they are allowed to make because—

Mr. ROHRABACHER. Let me offer this. If anybody could come to me and tell me specifically what you are suggesting, what the industry is suggesting, I will work with the chairman and try to see if we can push it in that direction.

Chairman BERMAN. The time of the gentleman has expired.

Mr. ROHRABACHER. Thank you.

Chairman BERMAN. And just sort of the chairman's abuse of his prerogatives, the irony is this is a country that pays taxpayer money to cover labor costs of American producers who will make—they want to make intellectual property in Canada. They just don't want to protect it in Canada.

Mr. SODERBERGH. If I could suggest that perhaps we ask the Canadian Ambassador to brief us, weekly, on this.

Chairman BERMAN. I think that is a subcommittee issue. [Laughter.]

But monthly, I hope. The gentlelady from Texas is recognized for 7 minutes to use as she wishes.

Ms. JACKSON LEE. Mr. Chairman, thank you very much, and the suggestion of meeting with the committee in Washington, weekly, might be a sufficient punishment, that might motivate them. We might consider that suggestion, Mr. Chairman.

I am very pleased that the chairman has focused this on an issue of great importance, but, more importantly, that he has enormous expertise, and I am delighted that the ranking member is here. Let me, as a Texan with stars in her eyes, thank all of these presenters, and particularly make note of the fact that when we come from places like Texas, we are in fact star bitten. So let me thank all of you for the movies and entertainment that we have had the pleasure of enjoying, and particularly those, Mr. Soderbergh, that have been both entertaining and with a message. We appreciate it, greatly.

We have been using a term that our President has reinstated, and I would like to use it now. The urgency of now. That phrase was first utilized by Dr. Martin Luther King, and, frankly, I think that we have come to a point where we have nowhere to go but to hit this crisis, head on. And I would just like to put these numbers in the record, that have probably already been.

But the motion picture industry has suffered piracy that has resulted in \$6.1 billion in piracy. It is 80 percent of the U.S. motion picture studio losses. And then to determine that \$200 billion, since 2005, which is a lot of money. Then the Intellectual Property Alliance has noted that 43 countries resulted in an estimated \$18.3 billion in trade losses, \$3.5 billion in China, and \$2.6 billion in Russia.

I think we have a monumental crisis, and I believe that we need to roll up our sleeves and take all the ideas that we can.

Mr. Soderbergh, I like both of your ideas. I think we need to understand the one that France has put in place. But I think the pricing question is something to really look at, because I would tell you that many populations, inner city populations, rural populations, would like to go to the theater. They don't have access to the Internet, like to have it, but might be receptive to being rewarded and fill those theater facilities and create additional jobs, which I think is very important.

So I am going to pose questions to all of you.

Mr. Trainer, if we were to begin to look at countries, and, say, for example, we looked at the suggestion in France, would we have any First Amendment problems in terms of someone's ability to have free expression to use the Internet, etcetera?

Mr. TRAINER. I think the way the U.S. judicial system works with litigation, we always have that possibility.

I think one of the issues is to really look at the Internet community. We know that, for example, in the New Zealand situation that was raised, they actually postponed the implementation of some of

their provisions simply because of a global outcry to what they had proposed, which is very similar to France.

So I think the problem is there are multiple sides to this issue, and before something like this is formally proposed, there will be a lot of communities that have to be consulted with.

Ms. JACKSON LEE. So we have to get our hands around it and really vet it, so that we can have something that will work.

Mr. Cook, again, do you find this problem internationally, meaning the kind of problems we are having? Is India, with its problems of participating in this, can they be an ally because of Bollywood? Is there any way that we could reach out to them and get them to see that this is a mutual loss, which I understand they are losing dollars as well?

Mr. COOK. Well, they are. I think the recent estimates are something like \$5 billion a year. They also feel there is a loss of some 800,000 jobs. They have, obviously, a very robust film community that is being rocketed in the wrong direction. It is becoming a giant problem for them. Certainly, we can, you know, learn from anyone that is doing it well. I am not sure they are doing it well right now.

Ms. JACKSON LEE. Well, since we have a problem with their taking some of our intellectual property, this is a Foreign Affairs Committee, we need to use a hammer, maybe along with some sugar, and India might be a place to go, because they are being mutually victims but also taking advantage of us.

Mr. COOK. Absolutely.

Ms. JACKSON LEE. Mr. Horowitz, if we were to meet with ambassadors, I think you mentioned the 301 list, and if we were to meet with ambassadors, my colleague asked the question—but do we add more countries to the list? How should we handle this? Again this is a hammer, or the, if you will, chicken and egg, or anything to get people to come to the table. Do we use a hammer in this meeting? Do we put more people on the 301 list? Or nations?

Mr. HOROWITZ. I know Canada has been on the 301 list for 13 years now.

Ms. JACKSON LEE. So you wonder what the impact is.

Mr. HOROWITZ. Right. But I think that one thing to consider is that there are attachés, IP attachés in many of our embassies, and I think it would be worthwhile for this committee to talk to them and find out what is working, and what isn't, and perhaps one of the solutions would be to increase the number of attachés that we have around the world.

Ms. JACKSON LEE. The chairman mentioned a similar position that France has, which is a producer or an arts person that would be looking at these issues.

Mr. Trainer, quickly, I think we can help you by having more Customs and Border Patrol agents. You said we never fulfilled our responsibilities on that, and I would like to say yes to that, as quickly as possible, to move forward on that.

I just want to get my last question in to Mr. Miller. These jobs are created all over America. When films come to different cities, as much as we bid for them, different States. We hire people, sometimes on site, obviously. We certainly look to hire those who are a part of the union.

What can we do, working internationally with our union brothers and sisters, to see that this is a problem, and they begin to put pressure on their own governments?

Mr. MILLER. Well, that is absolutely the case, and that this is, for the IATSE, and the people that work in the industry, it is a benefits issue and it is a jobs issue, and for every dollar that is stolen, it is a job, in some way, shape or form, and we need to work with the international community to make them aware that they are stealing health care from our citizens, and they are stealing jobs on the—not just in the United States and Canada, but globally as well, because motion pictures are made by U.S. companies all over the world.

We need to work with all of our trading partners, to encourage everyone to protect the intellectual property of every artist and company in the world. This is a benefits issue and a jobs issue.

Chairman BERMAN. The time of the gentlelady has expired.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Chairman BERMAN. Mr. Royce is recognized for 5 minutes.

Mr. ROYCE. So how do you incentivize the worst offenders, and China, in all of these reports, is the worst violator of IP protection? How do you ratchet up that pressure on piracy there? You know, being listed as a priority watch country on the Special 301 report apparently only goes so far. It hasn't achieved the goal.

Ted Fishman has got a book, "China Incorporated," that is interesting in its analysis, in terms of the organized way in which China has done this. He says China's failure to police intellectual property creates a massive global subsidy worth hundreds of billions of dollars to its businesses. China's vast counterfeiting schemes invade deep into the economies of their victims, expropriating their most valuable assets, and in so doing, undermining their victim's ability to counter.

As China grows into a great power, the wealth transferred into the country by stealing intellectual property will propel it forward. So far, pilfering intellectual property has cost China little. It has benefited it tremendously.

And he concludes, you know, with this concept. He says when tackling the issue of intellectual copyright protection, officials from the United States must see their task, not simply as a legal issue, but as an exercise in global political power.

Is it time for Congress, and the United States, and for the administration, to form a united front here in terms of using political power on China on this issue?

Mr. TRAINER. I will jump in. Well, I think there was some attempt to do that with the case against China in the World Trade Organization, and unfortunately, it didn't have, necessarily, the result the United States wanted.

I think the other thing we should look at is in the post-war period. You know, we went through this with Japan and with Korea, where they were major counterfeiters and pirates, but because they have developed and have some very big multinationals, and very successful, they too are very sensitive to intellectual property today.

I think one of the big challenges we may have is to add another dimension to our efforts in engaging China, which is, in addition

to the enforcement emphasis, to really get in there and try to sensitize, not just the government, but other elements of the society about intellectual property—

Mr. ROYCE. But they have a different business model, again going back to the point made in China, Incorporated. He says the business model is one where counterfeiters, companies there usurp foreign technology China desperately needs to meet its industrial goals. The counterfeiters give those companies the means to compete with foreign rivals who are forced to pay full fare for proprietary technology.

In other words, your thesis there, that we could convince the companies themselves—no, that is their advantage, that is their subsidy.

Mr. SODERBERGH. They were built doing this.

Mr. ROYCE. Right.

Mr. SODERBERGH. And that started decades ago, with software needed to grow these companies.

Mr. ROYCE. So we are going to need a different strategy. What might that strategy be?

Mr. SODERBERGH. It is wound so tightly into their culture, it is literally a Gordian knot, that I don't know how you unwind it. The other problem—

Mr. ROYCE. Are we missing something on the WTO enforcement, where we go back and use all our force to try to get—

Mr. SODERBERGH. Well, the problem if they can do it if they want. Chinese films don't get pirated in China.

Mr. ROYCE. Right.

Mr. SODERBERGH. So, clearly, you know, when they want something to stop, they can make it stop. I mean, this is the regime we are dealing with.

Mr. ROYCE. So going back to incentivizing them, so they know they have to stop it, do you have a thought on what might do the trick?

Mr. SODERBERGH. I think if you are talking about—if you get into the area of economic activity, the world is large enough, and diverse enough, that even if we removed ourselves from certain key areas, there are plenty of other places to go for them to do business.

Mr. ROYCE. And so they have wrecked the WTO, in a sense. I mean, the very concept behind the World Trade Organization is to have effective rule of law and effective enforcement. Is there a way to reinstitute that, so that there is enough pressure, collectively, to offset exactly what you are discussing?

Mr. SODERBERGH. Well, that is the issue, is how many people can you get to stand behind that idea?

Mr. TRAINER. If I just may add, one of the efforts of the anti-counterfeiting trade agreement negotiations that are ongoing, which is a smaller subset of countries, to raise IP enforcement standards is being pursued in a way, because you can't pursue it at the WTO.

We don't have a critical mass of countries that want to raise standards beyond the current international standard.

Mr. ROYCE. Yes. I think further examination of this issue, Mr. Chairman, would be well worthwhile in order to try to figure out

a methodology where we might reach that goal of having the WTO effectively enforcing intellectual property.

Chairman BERMAN. This may be a good time just to indicate—I was going to do it at the end of the hearing—that we are going to hold, in Washington, once the Special 301 report comes out, a follow-up hearing to bear down on bilateral remedies, technology issues, and the use of our trade representative on this, hopefully with an IP Czar there as well as the trade representative, if one is appointed.

Mr. ROHRABACHER. Mr. Chairman, if you could just indulge me for 10 seconds.

Mr. Soderbergh mentioned the Gordian knot of China. I would remind Mr. Soderbergh, that how did Alexander the Great untie the Gordian knot? And that is what we have to do. Thank you.

Chairman BERMAN. Mr. Schiff is recognized for 5 minutes.

Mr. SCHIFF. Thank you, Mr. Chairman. I wanted to just make a couple comments and get your thoughts.

One is I know through the different business models that have been employed, like iTunes, we have increased the legitimate sales on the Internet, which is great, and I assume those have brought in new revenue.

But I would assume at the same time that piracy has also increased. So it is not that we have taken a chunk out of piracy, or diminished piracy, necessarily, but we have maybe expanded the pie. So some additional revenues have come in, but the piracy probably has come in at an even greater rate than legitimate sales.

So while I think it is laudable that you are trying to adapt your business models to capture more legitimate revenue, I am not sure it is really curing the piracy problem. And I am also a little skeptical of the Google experiment. China, for the reason that if the content providers move to an advertising-only revenue model, they may be repeating what is happening to the newspaper industry. It hasn't worked out that well for them, to sort of drop subscriptions, and paying for content, and go to a model where they are completely reliant on advertising revenue.

And I would be concerned about moving too much in that direction. I realize in China, it is better to get something than nothing, but if it ends up becoming the sort of standard model for the industry, you may find out that you are falling in the steps of the newspaper industry.

I am very interested in the French model, and as I understand it—I don't even know if it has gone into effect yet. The challenge I would think we would have, legislatively, is if we deputize you—and there is nothing I would like better than to deputize you, because I don't think the Government can do all this.

What form would that take? Would it take the form of providing a legal immunity for those who, after the proper notices, take down a site, and therefore may be subject of being sued for taking down the site? So would we be authorizing, and therefore, in effect, immunizing the ISPs from doing that?

What kind of due process would we need to give if we are going to be, you know, affecting speech, among other things, and potentially barring people's access to the Internet? So that would be a second issue.

And the final question I have is won't there be an increasing confluence of interests among the content makers, among the studios, and the recording industry, as well as the pipelines, as the pipelines start to get into the entertainment business with their video on demand, and other things?

Don't the pipelines now have a greater confluence of interest with you to attack piracy on their own pipeline, because they are offering legitimate content now?

So if you could share your thoughts on those questions.

Mr. HOROWITZ. Well, let me just clarify one thing. The graduated response notion that we have been talking about in France is not the law yet. It has not been passed. It is something that is still being debated in France.

But I think that, to answer one of, I think, your key questions, ISPs, for their own purposes now, are realizing that their systems are becoming clogged, and that as they become more and more interested in freeing up their systems for legitimate purposes, their interests do become more and more aligned with the content companies, which is part of the reason why I think on the music side we are having some very successful discussions, for the first time with them now, about implementing some sort of voluntary, graduated response system here in the United States.

Mr. SODERBERGH.

And I guess it would be our hope, that since you are not talking about finding them, you are not talking about hauling them into court, that that person then who tries to sue, basically for the fact that you have annoyed them and made their life a little more difficult, or at least made it more difficult for them to do this specific thing, is going to make it more palatable, that these abilities have been granted, you know, to the people who control the copyright.

Mr. SCHIFF. I thought, though, that part of the French model, and I understand that it is not in effect yet, but was individuals who are in the business of uploading stuff and doing it on a massive scale, and get the requisite notice, or whatnot, could be denied the service by the Internet provider, and the desire would be not just to block them from access with that provider but have an agreement among other providers, that if you are banned, you can't go to another provider.

If that is what France is proposing, in part, then you are talking about the prospect of basically blocking people's access to the Internet, which is quite a substantial sanction.

So I would think, you know, the question would be, you know, what kind of due process would be necessary, if you are talking about, you know, potentially blocking access to such a now important tool in all of our lives?

Mr. SODERBERGH. Well, again I get back to the Target analogy. How many times do you have to catch this guy pulling stuff off your shelf, before you say you can't come in here?

Mr. HOROWITZ. I would just point out, there have been studies in the U.K., that simply getting a warning notice, just that in and of itself, has a significant effect on people pirating. Dramatic drop offs in the U.K. when they get that warning notice.

What we are talking about in France, or in any of these other countries that are discussing it, are some sort of graduated warn-

ing that ratchets up. It may not be, ultimately, that you are out for a year. It may be that you are out for a shorter period of time. But there needs to be some sort of rational, reasonable way that ISPs themselves take responsibility and accountability for what happens on their services, on their systems.

Chairman BERMAN. The time of the gentleman has expired. I think we are going to forgo a second round at this point because we are going to have a subsequent hearing.

There are a lot of different areas, with some specificity, that both the witnesses and members have discussed, which I think we should be following up on, and I had my own experience with trying to provide a self-help mechanism for intellectual property owners to deal with pirates that drew some controversy in the community. But we are going to take a look at a lot of these things and see what we can do, and particularly in our interventions with representatives of countries that are known, in part, for the massive amount of piracy that they are countenancing.

So with that, I thank all of my colleagues for coming today. I thank, really, an excellent group of witnesses for being here, and this is an ongoing process, and I appreciate very much your taking the time to be with us this morning.

And with that, the committee hearing is adjourned.

[Whereupon, at 12:10 p.m., the committee was adjourned, subject to the call of the chair.]

A P P E N D I X



MATERIAL SUBMITTED FOR THE HEARING RECORD

FULL COMMITTEE HEARING NOTICE

Committee on Foreign Affairs

U.S. House of Representatives

Washington, D.C. 20515-0128

Howard L. Berman (D-CA), Chairman

March 30, 2009

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held at the Van Nuys Civic Center, 14410 Sylvan Street, Van Nuys, CA 91401:

DATE: Monday, April 6, 2009

TIME: 10:00 a.m. (Pacific Standard Time)

SUBJECT: Sinking the Copyright Pirates: Global Protection of Intellectual Property

WITNESSES: Mr. Steven Soderbergh
National Vice President
Directors Guild of America

Mr. Richard Cook
Chairman
The Walt Disney Studios

Mr. Michael F. Miller, Jr.
International Vice President
The International Alliance of Theatrical Stage Employees (IATSE)

Mr. Zach Horowitz
President and Chief Operating Officer
Universal Music Group

Mr. Timothy P. Trainer
President
Global Intellectual Property Strategy Center, P.C.

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF FULL COMMITTEE HEARING

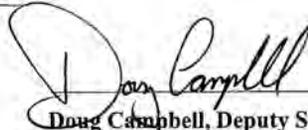
Day Monday Date 4/6/09 Room Van Nuys CAStarting Time 10:11 a.m. Ending Time 12:10 p.m.Recesses - (_____ to _____)Presiding Member(s) Howard L. Berman, (CA) Chairman**CHECK ALL OF THE FOLLOWING THAT APPLY:**Open Session Electronically Recorded (taped) Executive (closed) Session Stenographic Record Televised TITLE OF HEARING or BILLS FOR MARKUP: (Include bill number(s) and title(s) of legislation.)
Sinking the Copyright Pirates: Global Protection of Intellectual Property**COMMITTEE MEMBERS PRESENT:**Howard L. Berman, Heena Ros-Lentinen, Brad Sherman, Dana Rohrabacher, Edward Royce, and Sheila Jackson Lee,**NON-COMMITTEE MEMBERS PRESENT:**Adam SchiffHEARING WITNESSES: Same as meeting notice attached? Yes No

(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: (List any statements submitted for the record.)see attached**ACTIONS TAKEN DURING THE MARKUP:** (Attach copies of legislation and amendments.)**RECORDED VOTES TAKEN (FOR MARKUP):** (Attach final vote tally sheet listing each member.)

<u>Subject</u>	<u>Yeas</u>	<u>Nays</u>	<u>Present</u>	<u>Not Voting</u>
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TIME SCHEDULED TO RECONVENE _____

or
TIME ADJOURNED 12:10pm

Doug Campbell, Deputy Staff Director

Attendance - HCFA Full Committee
Sinking the Copyright Pirates: Global Protection of Intellectual Property
Van Nuys Civic Center located at 14410 Sylvan Street, Van Nuys, CA 91401
Monday, April 6, 2009 @ 10:00 a.m.

Howard L. Berman (CA)

Brad Sherman (CA)

Sheila Jackson-Lee (TX)

**Adam B. Schiff (CA)

Ileana Ros-Lehtinen, (FL)

Dana Rohrabacher (CA)

Edward R. Royce (CA)

** - Non Committee Member

Submission to the record:

1. Statement dated from the Directors Guild of America
 2. Statement dated from the Recording Industry Assoc. of America (RIAA)
 3. Statement from the Independent Film and Television Alliance (IFTA)
 4. Letter from RIAA dated 9/25/08 to Chairman Berman on piracy infringements.
 5. Testimony of Jeffrey "Skunk" Baxter submitted by Mr. Rohrabacher
-

Statement of Chairman Howard L. Berman at hearing, "Sinking the Copyright Pirates: Global Protection of Intellectual Property"

April 6, 2009

I'd like to start off by thanking everyone who traveled here today to help sink the copyright pirates who plunder our country's creative wealth. The theft of intellectual property – or IP – has plagued America's entertainment industry for many years. Just this week, a month before its release, the film "Wolverine," was downloaded over the internet hundreds of thousands of times. IP piracy has become an issue for a broad cross-section of the U.S. economy – for companies big and small in places far from Hollywood, Nashville and Broadway.

While the House Foreign Affairs Committee has always delved into matters of global economics and trade, this hearing marks the start of a concerted effort to capitalize on opportunities that are unique to this Committee. Through our oversight of international programs, travel and longstanding relationships with policymakers around the world, we plan to work more closely with other governments to provide the resources, training, legal guidance and tools which they need to alleviate the international piracy that is so devastating to American ingenuity – and American jobs.

According to the International Intellectual Property Alliance, copyright infringement in 43 countries caused an estimated \$18.3 billion in trade losses in 2007. The Motion Picture Association of America noted that the film industry lost \$6.1 billion in 2005 due to motion picture piracy. The music industry estimates over 40 billion illegal downloads in 2008. The U.S. Chamber of Commerce found that trade in counterfeited goods is responsible for the loss of 750,000 American jobs per year. We just spent billions of dollars on a stimulus package to provide jobs to millions of unemployed Americans, and if we merely focused on curtailing piracy and counterfeiting we would preserve almost a million jobs. IP protection is an economic stimulus. To help boost our economy, it is imperative that we take measures to ensure American innovations are protected abroad and artistic communities can earn a return on their investment in new creative expression.

This hearing is particularly timely as the Office of the United States Trade Representative will soon release the "Special 301" report. This report lists specific countries whose lack of IP protection have the greatest adverse effects on the United States' IP industries – among them, Russia, China, and India.

The types of piracy occurring abroad range from selling DVDs on street corners to mass production of optical discs and unauthorized reproductions distributed via the Internet.

By way of example, even though Russian law enforcement officials have increased the number of raids against warehouses storing pirated material, the number of criminal enforcement actions in the physical as well as on-line environment falls far short of what is necessary to address the problem. While Russia did shut down the website

Allofmp3.com which sold business without rights holders authorization, it became a game of whack-a-mole, as almost immediately several others took its place. In addition, Russia has yet to certify a legitimate collecting rights society, which, if it happens, will finally allow performers to collect for use of their music. Russia needs to live up to the intellectual property rights agreement it made with the United States in November of 2006, especially if it would like to be considered ready to join the World Trade Organization.

While Russia has failed to enforce intellectual property rights sufficiently, China has chosen to enforce them selectively. During the summer Olympics in China there were few, if any, counterfeit Olympic t-shirts to be found in the street stalls. NBC found that only one percent of online viewing by Americans occurred on copyright infringing sites. This proved that it is possible for Beijing to combat piracy when it wants to – when the eyes of the world are on China. Estimates from the U.S. copyright industries show that 85-90% of their members' copyrighted works sold in China in 2007 were pirated. Internet piracy is rampant in China and increasing as more Chinese are going on-line. In fact, the leading Chinese search engine for audio files, Baidu, offers links for downloading or streaming unauthorized copyrighted material. According to a recent article in Forbes, the number of copyright infringing videos on Chinese user generated sites jumped more than six-fold between September 2007 and September 2008. China must demonstrate the will and the way to deal with piracy.

As the desire for American content reaches new audiences overseas, pirates are becoming more sophisticated and daring. In particular, we are disturbed by the rise of signal piracy in the Philippines and alarmed by pirates in Thailand who have established their own movie channels. These modern day Thai pirates of the air are beaming unauthorized programming to millions around the region. Clearly, these types of piracy don't need to be occurring in big countries to have a devastating impact on the American economy. The Bahamas currently maintains a provision in its copyright law that allows local cable operators to downlink, re-transmit and profit from U.S. copyrighted works without authorization from the copyright holder. This practice sets a dangerous precedent for the protection of US audiovisual works throughout the Caribbean and Latin America.

Even countries not on the priority watch list engage in unprecedented levels of piracy. Spain remains a hub of Internet piracy. Mexico has more than 80 well-organized black markets selling pirated goods. Moreover, Mexico has the most prolific camcorder piracy problem in Latin America, as Mexican law doesn't protect against the recording of motion pictures in theaters. Speaking of lack of laws, we still need Canada to take a meaningful step to updating its copyright laws to come into compliance with the World Intellectual Property Organization Internet treaties.

Intellectual property piracy is truly a global problem that harms not only U.S. industry but has economic implications for other countries developing and supporting their own entertainment industries. India ought to appreciate the need to address IP protection. Its own homegrown entertainment industry, "Bollywood," is subject to many of the same concerns that plague Hollywood. We need to do better at protecting Bollywood films

when pirated copies are sold in mom and pop shops here in the U.S. And, as evident with the cross-over success and number of pirated copies of “Slumdog Millionaire” viewed in India, India needs to enforce adequate protections for international innovation as well.

The United States and its trading partners rely heavily on investments in intellectual property to drive our economies. Unfortunately, the incentives and profits for engaging in piracy are high, and the risks of being apprehended and sanctioned are low in many countries around the world. Furthermore, The Center for Global Risk and Security at the RAND Corporation released a report in March documenting a link between piracy, organized crime and funding of terrorist activities. Piracy of copyrighted materials is not a victimless crime and its global repercussions must be addressed. I plan to introduce legislation shortly that will begin to elevate the attention given to intellectual property concerns abroad.

We hope to hear from the witnesses about the real impact of piracy on their businesses and mechanisms we can implement to protect American intellectual property internationally.

**Remarks of the Hon. Illeana Ros-Lehtinen, Ranking Member
Committee on Foreign Affairs
For Hearing on:
“Sinking the Copyright Pirates: Global Protection of Intellectual Property”
April 6, 2009**

I am very pleased that you have called this hearing today on the global piracy of intellectual property.

As you are aware, the Committee has had a long interest in this worldwide problem and its broad impact on U.S. interests, including our national security.

A prominent example of the Committee’s work was the hearing in 2003 at which senior officials from Homeland Security and Interpol testified that violent Islamist militants, including al-Qaeda, Hamas, and Hezbollah, were enriching themselves from intellectual property piracy and using the proceeds to fund their activities around the world.

According to the Secretary General of Interpol:

“intellectual property crime is becoming the preferred method of funding for a number of terrorist groups. There are enough examples now of the funding of terrorist groups in this way for us to worry about the threat to public safety.”

Recent reports indicate that the threat continues to grow.

Many people believe that the piracy of intellectual property, including their own illegal copying of music, movies, and software, or their purchasing bootleg copies, is close to being a victimless crime, with only a minor cost to large and wealthy corporations.

But there are in fact real victims in these so-called “victimless” crimes, namely those who have been killed and maimed by the terrorists whose actions were made possible by this blood money.

My direct involvement in intellectual property rights is long-standing.

For six years, I served as Chair of the Subcommittee on International Economic Policy and Trade, where one of our top concerns was combating the infringement of intellectual property rights.

As I noted, these crimes are often regarded as the problem of faceless corporations that have little to do with the average citizen.

But in fact it affects all of us.

As our economy has moved from one of traditional manufacturing to one that is knowledge-based, the protection of intellectual property rights has become increasingly important to our country's prosperity.

It is definitely a cause of concern to the increasing number of Americans whose livelihoods depend directly on these industries.

In 1996, the International Intellectual Property Alliance estimated that U.S. businesses lost more than \$6 billion to copyright pirates in other countries, with China accounting for one-third of the total.

The problem was enormous then and has grown rapidly since.

In 2007 alone, U.S. companies lost more than \$20 billion due to copyright infringement around the world.

This annual theft of tens of billions of dollars is manifested in the loss of countless jobs and a major reduction in tax revenues.

The problem is a global one, and there are few countries where it does not occur, including our own.

But the great bulk of the problem occurs in a relatively few countries.

The principal blame falls upon the criminals and terrorists who do the dirty work, but their ability to operate requires the tolerance of national and local governments.

Protection from law enforcement officials is often secured through corruption funded by the large profits from these criminal activities.

But widespread corruption is not the only obstacle.

The biggest problem is that many foreign governments view this issue as being of little direct concern to them and see the costs as being largely borne by others.

Thus, they have little incentive to do more than the minimum needed to keep the U.S. and other countries reasonably satisfied that “something” is being done.

This lax attitude makes much of our effort to deal with this problem ineffective.

When they are confronted with evidence that their citizens are engaged in illegal activities and are reminded that their international agreements require them to take action to stop it, foreign governments are prone to make empty pledges that they will do more in the hope that this will satisfy our requests.

New measures are often agreed to, promises are made, and yet somehow the problem is never really addressed.

So any policy that relies on securing new agreements or fresh promises is unlikely to solve the problem.

This is the case in China, the worst violator of intellectual property rights in the world.

The U.S. government has repeatedly asked Chinese authorities to take action to deal with the enormous problem of intellectual property piracy, and we have been repeatedly told that they are doing all that they can.

However, too little is being done, and that is by choice.

For example, China’s largest internet search company, known as Baidu (BY– doo), automatically asks everyone who logs on to its site if they want to link to a wide array of known music piracy sites.

Baidu is actually pushing piracy.

And it is a legitimate company, operating openly in China.

The Chinese authorities are well aware of this problem and could shut it down with a phone call.

But they have knowingly decided to do nothing to address our complaints because they have decided to pursue a policy in which Baidu and other Chinese companies will become global players in this industry.

Chinese authorities have invested enormous resources into censoring anything on the web that dares to mention democracy, the Falun Gong, or any other subject the regime wants to suppress.

And many people have actually gone to jail for simply expressing their views.

Yet Chinese officials make the absurd claim that there is nothing more they can do regarding on-line intellectual property piracy.

This is outright theft made possible by government policy.

And China is not the only country where this occurs.

The root of the problem worldwide is that for many governments the costs of doing nothing are small, while the financial benefits to their own companies can be quite large.

The only way to change that attitude is to change the incentives, namely by increasing the costs of failing to take action.

The effectiveness of this approach will depend directly upon the pressure applied.

That cannot happen without the active role of the U.S. government.

Asking our trading partners to uphold their commitments is certainly part of that process.

But the olive branch alone has not worked and must be supplemented with firmer measures.

Yes, we must actively use the existing processes in the various international agreements that concern intellectual property rights and, yes, we must work with our allies to coordinate our efforts, as many of these are increasingly affected by this problem, too.

But if we are to make our efforts more effective, our tools must include a credible threat that real costs will be imposed unless these governments not only take action to stop this piracy, but actually do stop it.

That is why I am so pleased that we are having this hearing today.

For if Congress is not seen as taking an interest in a concern of this magnitude, why should other governments?

We must ensure that our officials continue to actively press those governments which are doing too little and publicly hold them accountable for their actions.

We must make certain that U.S. officials have the authority and the political backing they need to do so.

Congress must also be ready to back up its words with legislative action, including that needed to ensure that tough sufficient economic and commercial pressure is placed on those governments that refuse to stop these criminal activities on their territory.

There is a limit to our patience.

We literally can no longer afford to look away and tolerate inaction when our interests are being undermined by governments which profess friendship and cooperation, even as their citizens rob ours of their wealth and livelihoods, and our country of its prosperity.

Thank you, Mr. Chairman.



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INTRODUCTION

IFTA would like to thank the Members of the House Committee on Foreign Affairs for the opportunity to provide further information on the impact of global intellectual property piracy in conjunction with the Hearing chaired by Congressman Howard Berman in Van Nuys, California on Monday, April 6, 2009, entitled "Sinking the Copyright Pirates: Global Protection of Intellectual Property."

ABOUT IFTA AND ITS MEMBER COMPANIES

IFTA is a non-profit trade association for the independent film and television industry worldwide. Based in Los Angeles, California, IFTA represents over 160 member companies from 22 countries, including 97 IFTA member companies in the United States. IFTA Members are independent production and distribution companies, as well as sales agents, television companies, studio affiliated companies and financial institutions. As a founding member of the International Intellectual Property Alliance and an NGO member of World Intellectual Property Organization, IFTA actively participates in discussions regarding intellectual property law and regularly provides input to governments worldwide on a wide range of copyright, trademark and financing issues that impact the independent industry.

IFTA Members produce more than 400 independent films and countless hours of television programming annually, and they produce, distribute and finance some of the world's most successful films. Since 1980, over one half of the Academy Awards for Best Picture have been produced by IFTA member companies. Films such as *Crash*, *Million Dollar Baby*, the *Lord of the Rings* trilogy, *My Big Fat Greek Wedding* and *Bend it Like Beckham* have all been independently produced and financed. Recently, two IFTA member company films- *Milk* and *The Reader*- were nominated for Best Picture at the 2008 Academy Awards.

Independent films and programs are made at every budget level and may be mainstream, commercial or art house. IFTA does not define 'independent films' as a genre or a budget range. We define independent producers and distributors as those companies and individuals (apart from the major U.S. studios) that assume the majority of the financial risk for the production of a film or television program and control its distribution in the majority of the world.

The production, financing and distribution models of independent producers and distributors differ substantially from those of the major Hollywood studios. Independent producers secure financing and distribution for each film, on a one by one, country-by-country basis. They work closely with local distributors in each country to secure distribution of each film based upon many factors including script, director, writer or key cast. Often distribution must be secured before the film is produced since the local distributors provide a portion of the production financing in the form of minimum guarantees toward the license fee of each film. Once enough minimum guarantees have been secured, the license agreements are then collateralized by a financial institution who loans the production budget for that film and an independent film can then be created.



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In contrast, the major studios are vertically integrated, possessing their own network of national distributors around the world, able to place programming directly in theaters, cable, satellite, broadcast television, DVD and (increasingly) the internet. These conglomerates “greenlight” and finance their film and television productions to fill their pipelines and to drive merchandising, theme parks and other non-production related ventures.

PIRACY’S IMPACT ON THE INDEPENDENT FILM AND TELEVISION INDUSTRY

Due to the unique financing and distribution models (some would say challenges) for the independent production and distribution industry, piracy has damaging effects beyond the lost revenues fully outlined during the Hearing. Independent production and distribution companies must also contend with the negative impact piracy has on their businesses in the following ways:

Damage to local distributors lowers license fees and impacts the ability to finance future content
 IFTA Members utilize the same local distribution companies worldwide as the indigenous film producers, and the health of those local distributors and film industries is of the utmost importance to U.S. independent producers. In the case of the independents, piracy is not just the stealing of a copy of the film. Piracy damages the value of independently produced films by lowering the license fees that may be obtained from local distributors, thus removing the incentive and in most case the ability to finance and produce the next film.

Due to the damage that piracy does to the local distribution network, it is no surprise that piracy lowers the license fees that legitimate distributors can pay for independent films. Legitimate distributors cannot compete against the pirates when such product is free or nearly free. Increasingly, IFTA Members realize this impact of piracy in individual business negotiations. Local distributors will often cite piracy, even for films not yet released in that market, as a reason to pay reduced license fees or to decline to distribute the film at all. Ultimately, the damage to local markets worldwide, which impedes the ability of the independents to finance subsequent productions, threatens to rapidly silence diverse voices.

Damage to existing business models due to government inaction
 Government complacency about internet piracy damages existing business models, *especially in countries such as Spain and China*, where the governments’ ability to control the large ISPs is clear but yet they chose to turn a blind eye to the damage piracy is causing to their own marketplaces. As was pointed out at the hearing, this “blind eye” allows ISPs to build market share and finance network expansion on the basis of consumer demand for programming supplied by pirates and their illegal operations. Governments can prevent piracy (e.g., no counterfeit Olympic merchandise or pirated broadcasts were allowed in China during the 2008 Olympics), but they chose not to enact or enforce copyright laws.

In countries where piracy is rampant to a point of systemic abuse of copyright laws, individual rights holders cannot combat piracy without an effective legal framework and government action. For example, worldwide same day release (referred to as day and date release) may prove an effective method to curb or delay piracy for the major studios, but for independents, whose

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national distributors release on their own schedule, this prevention technique is impossible. Private rights of action are expensive, and judgments (if any) are impossible to enforce effectively. Therefore, in instances where the piracy problem is so intractable, it needs to be addressed at the government level.

Piracy damages the ability to employ American workers and pay taxes to local governments

IFTA agrees with the statement made during the Hearing by IATSE– International Vice President, Michael F. Miller- that piracy jeopardizes the valuable and much needed economic benefits to American businesses and the American workers they employ, as well as the taxes to support federal and local government.

In 2007, independent production companies shot 477 films in the U.S. Based on production models of the Los Angeles Economic Development Corporation, this independent production activity resulted in the creation of 39,879 direct full time jobs and another 120,000 full time jobs for various vendors that service the independent film industry. Both classes of employees earned nearly \$19 billion combined. This independent production activity resulted in business revenue totaling over \$27 billion in economic output. It also generated nearly \$2.9 billion in federal income tax and nearly \$1 billion in individual state income and sales tax.^[1]

If piracy is allowed to further infiltrate and damage the independent film industry, not only are the creative results of the independent producers work lost but also the economic benefits that flow to the economy and government will disappear too. It is urgent that piracy is addressed at many levels with strong intellectual property laws worldwide, effective criminal and civil enforcement and sufficient governmental resources.

INDUSTRY SOLUTIONS MUST INCLUDE ALL STAKEHOLDERS

As Mr. Soderbergh on behalf of the Directors Guild of America mentioned, the industry can be deputized along with the ISPs to implement solutions to internet piracy. It is imperative, however, that any future solutions are implemented in a non-discriminatory manner and do not impede consumers' access to legal content and services.

IFTA strongly believes that government oversight will help ensure that all stakeholders are actively included and involved in “industry at large” discussions and solutions, including those that would impose *inter alia* filtering technology. At the hearing, Mr. Horowitz of Universal Music Group said that talks with large ISP/cable providers such as Comcast, Cox, and Time Warner to employ automatic warnings are in progress. IFTA agrees that industry consensus for the use of technical solutions to piracy appears to be an attractive tool in the fight against piracy, but only if such technological solutions take into account the interests of independents. IFTA has already encountered an uphill climb in ensuring that its Members are included in the discussions or in the deployment of technological solutions.

^[1] In 2008, IFTA's Research and Strategic Analysis Department issued a report on the economic impact of independent production in the United States during 2007.

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Enforcement is expensive, especially for independents that often rely on exclusive distributors in each country to enforce the licensed IP rights. Using technology to prevent frontline infringement is a desirable solution provided that all stakeholders participate in the development and implementation to ensure that technological tools such as filtering systems employed by ISPs are available to ALL rights holders, do not attack legal content and services, and are reasonable and transparent to all users.

CONCLUSION

IFTA would like to express its sincere interest in being part of industry and governmental discussions to identify and implement solutions to piracy. We encourage all Committee Members to call on us for information regarding worldwide marketplace conditions and the impact of piracy on independent film and television production and distribution companies. Additionally, it would be IFTA's pleasure to present a knowledgeable witness to testify at a subsequent hearing on piracy and its impact on the intellectual property industry. Once again, thank you for your time and support of the intellectual property industry.

